P.G. Eshwarappa

Vs

M. Rudrappa and Others

Civil Appeal No. 1129 of 1991

(K. Ramaswamy, K. Venkataswami JJ)

28.08.1996

JUDGMENT

1. This appeal by special leave arises from the order dated 25-7-1990 of the Division Bench of the Karnataka High Court in Writ Petition No. 4044 of 1986. Admitted facts are that one Mohammed Khan was the original owner of an extent of 2 acres 37 gunthas of land in Survey No. 22/2 of Arundi village, Honnali Taluk, Shimoga District in Karnataka State. The father of the respondents, Channabasappa was a tenant under him. Mohammed Khan sold the land to the appellant for consideration after their father had refused to purchase the land. Subsequently, the appellant again got issued notice calling upon them to pay the rent. Since the respondents' father had asserted his title and denied title of the appellant's father, he came to file a suit for declaration of title and for recovery of the possession, which was decreed on 28-9-1959 by operation of clause (g) of Section 111(g) of the Transfer of Property Act, 1882. Thereby, he forfeited his right to the tenancy on 28-9-1959. It was upheld on appeal.

2. It is claimed that the appellant had executed the decree and come into possession of the land on 13-4-1967. Subsequently, the respondents' father filed an application before the Land Reforms Tribunal for claiming possession as a tenant. That application came to be dismissed. Pending those proceedings, the Amendment Act 1 of 1974 (for short, "the Amendment Act") came into force on 1-3-1974 which amended the Land Reforms Act, 1961 (for short, "the Act") which had come into force in 1965. Application filed under Section 129 was declared abated in appeal on account of the coming into force of the Amendment Act. Subsequently, another application under Section 48-A came to be filed. That has given rise to the present proceedings. When the matter was dismissed by the Tribunal and came up before the High Court, a Division Bench of that Court in Writ Appeal No. 1051 of 1980 concluded that since the eviction of the respondents had taken place after the Act had come into force, an order of eviction obtained against the respondents was inoperative. Consequently, an application had to be considered for eviction in accordance with the provisions of the Act. Since that was not done the Division Bench remitted the matter to the Tehsildar for reconsideration in accordance with the law. When the same came to be challenged in this Court in SLP No. 2866 of 1981, by order dated 19-2-1982 this Court while upholding the order of remand as legal had given liberty to raise all the relevant questions afresh. After remand, the claim of the respondents was rejected. Ultimately, in WP No. 4044 of 1986 by the impugned judgment dated 25-7-1990 the Division Bench has held that their eviction under the decree obtained in OS No. 57 of 1958 was not effective by operation of Section 22(1) of the Act. Consequently, the Tribunal has committed error of law in refusing to restore possession of the land to the respondents. Therefore, directions came to be issued as under :

> "(i) The writ petition is allowed with costs.

(a) The impugned order of the Tehsildar dated 23-9-1982 (Annexure B) as also of the Assistant Commissioner dated 20-1-1986.

(iii) The application filed by the petitioners under Section 129 of the Act stands allowed.

(iv) The Tehsildar is directed to put the petitioners forthwith in possession of the land of 2 acres 37 gunthas in Survey No. 22/2 of Arundi village, Honnali Taluk Shimoga District which was the subject-matter of their application under Section 129 of the Act."

3. Shri R.S. Hegde, the learned counsel appearing for the appellant, contended that since the forfeiture of the tenancy by the respondents' father had taken place prior to the coming into force of the Act, his status of being in possession was of a trespasser and not as a tenant. When the Amendment Act had come into force, he could be said to be in possession as a trespasser. The Act, as amended under the Amendment Act, gives right only to a tenant. Since the respondents were not tenants under the appellant's father they are not entitled to the benefit of the provisions of the Act. It is also contended that Section 22 is inapplicable to the facts in this case. Since the decree passed against the respondents' father and the respondents had become final they cannot get any right to possession under the Act. The execution had taken place in accordance with the decree and as per the law prevailing at that time and, therefore, there was no impediment in execution of the decree against the respondents. We find no force in the contention. The Act having come into force on 2-10-1965, the provisions thereof were applicable on 13-4-1967. Section 22(1) of that Act, insofar it is relevant for our purpose, read thus :

"22. Eviction of tenant for default etc. - Notwithstanding any ... decree or order of a court of law, or anything contained in any enactment or law repealed by Section 142 or in any other law in force before the commencement of such enactment or law ... no person shall be evicted from any land held by him as a tenant except on the following grounds, namely -

(a) that the tenant has failed to pay the rent of such land on or before the due date during two consecutive years, provided the landlord has issued every year within three months after the due date a notice in writing to the tenant that he has failed to pay the rent for that year;

(b) that the tenant has done any act which is permanently injurious to the land;

(c) that the tenant has sub-divided, sub-let or assigned the land in contravention of Section 21;

(d) that the tenant has failed to cultivate the land personally for a period of two consecutive years;

(e) that the tenant has used such land for a purpose other than agriculture or allied pursuits :

Provided that no tenant shall be evicted under this sub-section unless the landlord has given three months' notice in writing informing the tenant of his decision to terminate the tenancy and the particulars of the ground for such termination and

within that period the tenant has failed to remedy the breach for which the tenant is proposed to be evicted."

4. A reading thereof would clearly indicate that as on the date the Act had come into force the appellant had not taken possession of the land. By operation of sub-section (1) of Section 22 with a non obstante clause, any decree or order of a court of law, or anything contained in any enactment or law repealed by Section 142 or in any other law in force before the commencement of such enactment or law, no person shall be evicted from any land held by him as a tenant except on the grounds enumerated in clauses (a) to (e) of the Act. Admittedly, clauses (a) to (e) do not contain any of the grounds on which the respondents came to be ejected. The pre-existing right of landlord under a decree of a court of law or any other thing contained in any enactment or law repealed by Section 142, or bilateral contract stood nullified and has put an end to all liabilities incurred by the tenants. New rights and liabilities of the landlord and tenants were created, security of rights to the tiller of the soil as also forums are created for their enforcement. Thereby, the liability of ejectment incurred by the tenant under contractual relationship prior to the Act had come into force and the enforceability of the decree has been set at naught by legislative judgment. New rights have been created in favour of the tenants-in-possession. Admittedly, the respondents remained in possession as on the date the Act had come into force, i.e., on 2-10-1965. Execution had taken place in 1967, i.e., after the Act had come into force. Consequently, their eviction was clearly in violation of Section 22(1) of the Act. The High Court was right in its conclusion that since the respondents succeeded to the tenancy rights held by the father they took tenancy right by inheritance. They are entitled to the tenancy right held by their father as intestate successor. Consequently, their eviction in execution of the decree passed by the civil court was clearly in violation of Section 22(1) of the Act. The principles of estoppel or res judicata do not apply where to give effect to them would be to counter some statutory direction or prohibition. A statutory direction or prohibition cannot be overridden or defeated by a previous judgment between the parties.

5. The earlier Division Bench was also right in holding that the eviction of the respondents was not valid in law. We are informed that after the order was passed by the Division Bench, the respondents have been put in possession and are continuing in possession.

6. Under these circumstances, we do not think that it is a case warranting our interference. The appeal is accordingly dismissed but in the circumstances without costs.