Sangappa Kalyanappa Bangi (dead) through Lrs.

Vs

Land Tribunal, Jamkhandi and Others

Civil Appeal No. 1998 of 1991

(S. Saghir Ahmed, Rajendra Babu JJ)

15.09.1998

JUDGMENT

RAJENDRA BABU, J.

1. Sangappa Kalyanappa Bangi claiming to be a tenant in respect of land comprised in Survey No. 169/1-A measuring about 16 acres 3 gunthas situated at Jamkhandi made an application to the Land Tribunal at Jamkhandi for grant of occupancy rights in respect of the said land. The Land Tribunal made an order on 28-3-1988 holding that Respondents 2 to 5 are entitled to occupancy rights in respect of the said land. Aggrieved by that order, an appeal was preferred to the District Land Reforms Appellate Authority (hereinafter referred to as "the Appellate Authority"). The Appellate Authority dismissed the same. Aggrieved by that order, a revision petition was preferred before the High Court unsuccessfully. Hence this appeal by special leave.

2. The facts leading to this appeal are as follows :

Sangappa Bangi made an application under Section 45 of the Karnataka Land Reforms Act, 1961 (hereinafter referred to as "the Act") in Form 7 claiming occupancy rights in respect of the land in question. During the pendency of the proceedings, he made a Will on 8-4-1975 bequeathing his tenancy rights in respect of the land in favour of one Ameerjan who claims to be the legal representative of the appellant Sangappa who died during the pendency of proceedings before the Tribunal. She in turn executed another Will under which Husensab is making a claim to the land through the said Sangappa. Respondent 2 is the wife of the said Sangappa while Respondents 3 to 5 are the children of Sangappa. The Land Tribunal as well as the Appellate Authority examined the question whether right to tenancy could have been the subject-matter of a bequest under a Will. In answering that question, the Appellate Authority referred to a decision of the High Court of Karnataka in Shivanna v. Rachiah ((1977) 1 Kant LJ 146 (Short Notes Item 160)) CRP No. 319 of 1976 dated 29-3-1977 wherein it was stated that there was no prohibition against a tenant disposing of his interest by testamentary disposition. However it was stated that such testamentary disposition must be confined to the heirs of the deceased or an interpretation of the provision of Sections 21 and 24 of the Karnataka Land Reforms Act that the tenancy rights are inherited only by legal representatives and not by anybody else; that tenancy could be deemed to have been continued in favour of the heirs of the tenant. It is also made clear that transfer of tenancy rights made in violation of the provisions of Section 21 would be void. The High Court did not give any detailed reasons, but taking the view that the Appellate Authority and the Land Tribunal having concurrently held that Respondents 2 to 5 are entitled to grant of occupancy rights, found no reasons to interfere with the order made by them.

3. Shri S. K. Kulkarni, learned advocate for the appellants, submitted that it is clear from the law laid down by this Court in Angurbala Mullick v. Debabrata Mullick (AIR 1951 SC 293 : 1951 SCR 1125) that a bequest to be made under a Will is not confined to the issues, but may include others and a bequest under a Will would not amount to assignment or transfer and in support of this proposition, he further placed reliance upon the decision of the Karnataka High Court in Shivanna v. Rachiah ((1977) 1 Kant LJ 146 (Short Notes Item 160)) (Short Notes Item 160) to which we have adverted to earlier and Dhareppa v. State of Karnataka ((1979) 1 Kant LJ 18). He submitted that the Will is not a transaction wherein property will pass inter vivos inasmuch as the Will takes effect only on the death of a party and is not a mode of succession thereof and there is no element of transfer or assignment of the same. He further submitted that the view taken by the High Court in Timmakka Kom Venkanna Naik v. Land Tribunal ((1987) 2 Kant LJ 337) is not correct and the High Court therein had placed reliance on the decision of the Bombay High Court in Anant Trimbak Sabnis (Dr) v. Vasant Pratap Pandit (AIR 1980 Bom 69 : 1979 Mah LJ 755) which stated that assignment will also include a disposition under a Will. He stated that enunciation was made in the context of the Bombay Rent Act and under the scheme of that enactment, even disposition by Will was included. He, therefore, very strongly commended to us that the view taken by the Appellant Authority was not correct and needs to be interfered with.

4. Shri Mohan V. Katarki, learned advocate for the contesting respondent, submitted that there is no definition of heir or assignment in the Land Reforms Act. To ascertain the meaning of these expressions, we have to look to the Transfer of Property Act or personal law as is applicable to the deceased Sangappa. He submitted that the scheme of provision under Section 21 of the Land Reforms Act excluded a disposition of property under a Will. He pointed out that the object of prohibitions under Section 21 is not to allow any stranger to come on the property. Insofar as the members of the family of a deceased tenant or his heirs are concerned, the law has made an exception as provided in the proviso thereto. Therefore, the meaning of the expression "heirs" must be confined only to the deceased's issues or spouse or who are under law recognised as heirs and not to those who become heirs by virtue of an intercession of a Will. He strongly relied upon the decision in Anant Trimbak Sabnis (Dr) v. Vasant Pratap Pandit (AIR 1980 Bom 69 : 1979 Mah LJ 755) which in turn had been approved by this Court in Bhavarlal Labhchand Shah v. Kanaiyalal Nathalal Intawala ((1986) 1 SCC 571 : AIR 1986 SC 600). He submitted that the expression "heir" or "assignment" may be given either a restrictive meaning or an enlarged meaning depending upon the circumstances arising in a case and in the present case, the object of Section 21 being very clear not to induct strangers upon the property, a restricted meaning will have to be given to the concept of heirs and a wider meaning will have to be given to the expression "assignment" so as to include a disposition under a Will. He contended that that is how Sections 21 and 24 will have to be read together and read thus, the view taken by the Karnataka High Court in Timmakka Kon Venkanna Naik v. Land Tribunal ((1987) 2 Kant LJ 337) is in order and that view is sound. He also drew our attention to the decisions of Indian Oil Corpn. v. Himangshu Kumar Ghosh (AIR 1983 Cal 87 : (1982) 86 CWN 1099) and Balu v. Birda (AIR 1983 Raj 13) in support of the contentions put forth by him.

5. This case gives rise to a difficult and doubtful question, whether a devise under a Will would amount to an assignment of interest in the lands and, therefore, would be invalid under the provisions of Section 21 of the Land Reforms Act. What is prohibited under Section 21 of the Act is that there cannot be any sub-division or sub-letting of the land held by a tenant or assignment of any interest thereunder. Exceptions thereto are when the tenant dies, the surviving members of the joint family and if he is not a member of the joint family, his heirs shall be entitled to partition and sub-divide the land leased subject to certain conditions. Section 24 of the Act declares that when a tenant

dies, the landlord is deemed to continue the tenancy to the heirs of such tenant on the same terms and conditions on which the tenant was holding at the time of his death. We have to read Section 21 with Section 24 to understand the full purport of the provisions. Section 24 is enacted only for the purpose of making it clear that the tenancy continues notwithstanding the death of the tenant and such tenancy is held by the heirs of such tenant on the same terms and conditions on which he had held prior to his death. The heirs who can take the property are those who are referable to in Section 21. If he is a member of the joint family, then the surviving members of the joint family and if he is not such a member of a joint family, his heirs would be entitled to partition. Again, as to who his heirs are will have to be determined not with reference to the Act, but with reference to the personal law on the matter. The assignment of any interest in the tenanted land will not be valid. A devise or a bequest under a Will cannot be stated to fall outside the scope of the said provisions inasmuch as such assignment disposes of or deals with the lease. When there is a disposition of rights under a Will, though it operates posthumously is nevertheless a recognition of the right of the legatee thereunder as to his rights of the tenanted land. In that event, there is an assignment of the tenanted land, but that right will come into effect after the death of the testator. Therefore, though it can be said in general terms that the devise simpliciter will not amount to an assignment, in a special case of this nature, interpretation will have to be otherwise.

6. If we bear in mind the purpose behind Section 21, it becomes clear that the object of the law is not to allow strangers to the family of the tenant to come upon the land. The tenanted land is not allowed to be sub-let, i.e., to pass to the hands of a stranger nor any kind of assignment taking place in respect of the lease held. If the tenant could assign his interest, strangers can come upon the land, and therefore, the expression "assignment" will have to be given such meaning as to promote the object of the enactment. Therefore, the deceased tenant can assign his rights only to the heirs noticed in the provision and such heirs could only be the spouse or any descendants or one who is related to the deceased tenant by legitimate kinship. We must take into consideration that when it is possible for the tenant to pass the property to those who may not necessarily be the heirs under that ordinary law and who become heirs only by reason of a bequest under a Will in which event, he would be a stranger to the family and imported on the land thus to the detriment of the landlord. In that event, it must be taken that a devise under a Will will also amount to an assignment and, therefore, be not valid for the purpose of Section 21 of the Act. If Section 24 is read along with Section 21, it would only mean that the land can pass by succession to the heirs of a deceased tenant, but subject to the conditions prescribed in Section 21 of the Act. Therefore, we are of the view that the broad statement made by the High Court in the two decisions in Shivanna ((1977) 1 Kant LJ 146 (Short Notes Item 160)) and Dhareppa v. State of Karnataka ((1979) 1 Kant LJ 18) would not promote the object and purpose of the law. Therefore, the better view appears to us is as stated by the High Court in Timmakka Kom Venkanna Naik v. Land Tribunal ((1987) 2 Kant LJ 337).

7. However, Shri Kulkarni drew our attention to a decision of this Court in Angurbala Mullick v. Debabrata Mullick (AIR 1951 SC 293 : 1951 SCR 1125) to contend that an heir need not necessarily be a natural descendant or one who is related by legitimate kinship, but others also and therefore if any interest in a property is devised to them, the same would not amount to assignment barred under Section 21 of the Act. It is no doubt true that the meaning attributed to an heir could be as suggested by the learned counsel for the appellants so as to include the descendant and other persons related by legitimate kinship or otherwise who may be covered by a Will, but the true question to be decided in this case is if a devise of that nature is hit by Section 21 of the Act or not. The object and purpose of Section 21 being to confine the rights of tenancy only to those known under law as heirs and therefore, assignment to strangers is barred. Thus it can be seen that a broad

definition of an heir would not be of much help. Hence, the learned counsel for the appellant cannot derive any assistance from the said decision.

8. We, therefore, dismiss this appeal, directing the parties to bear their respective costs.