SUPREME COURT OF INDIA

Mohan Balaku Patil and other

Versus

Krishnoji Bhaurao Hundre (dead) by Lrs.

(S.P. Bharucha and S. Rajendra Babu, JJ)

Civil Appeal No. 4785 of 1994

28.01.1999

JUDGMENT

Rajendra Babu, J—

The appellant before us made a claim for registration of occupancy right under Section 45 of the Karnataka Land Reforms act, 1961 (hereinafter referred to as 'the Act") before the Land Tribunal in a proceeding initiated under Section 48-A of the Act. The Tribunal, by an order made on 24.4.1981, upheld the claim made by the appellants. The appellants and the respondent laid evidence. The Tribunal noticed that the mother of the appellants stated that the land in dispute was being cultivated by her husband, Balaku Patil, over 30 to 35 years as a tenant and now it is in her possession and she was paying a rental of 6 bags of paddy and Rs. 50. The respondent deposed that he has purchased the property in disputed for a consideration of Rs. 4000 and he has been in possession of the land in question and has paid the land revenue thereof. The Tribunal, in order to ascertain as to who was in possession on the date on which the Act came into force, i.e. 1.3.1974, made a spot enquiry on 28.3.1981. It was found that the land was being cultivated by growing chili, sugarcane, potato etc. which were standing on the land and on local enquiry, it was found that actually been issued by the owner of the land and kabuliyat had also been made on the same date. Subsequently, in the year 1956, a notice had been issued calling upon the tenant to give up possession of the land as the land lord required the same bona fide for his own cultivation. The documents thus indicated that the property in dispute was tenanted land. Subsequently, in the Record of Rights in the year 1957, the name of Bharama, brother of the father of the appellant, was deleted and it was shown that the land was under the personal cultivation of the owner. That entry did not show as to the circumstances in which the change was effected. The Tribunal found that the appellants were in actual possession of and were, in fact, cultivating the land and that threr was material to show that the said land was tenanted and nothwithstanding the entries made in the revenue records.

2. The Tribunal conluded that the property in dispute was in actual possession of the appellants and they have been cultivating the same since many years notwithstanding the subsequent entries in Record of Rights. On appeal to the District Land Reforms Appelate Authority, the order made by the Land Tribunal was reversed and the appelants were found not oto be the

lawful tenants of the land and the order made by the Land Tribunal granting occupancy righs to the mother of the appellants was set aside. In reaching this conclusion, the appellate authority did find that the possession of the land had been with the appellants. This was admitted by the respondent. It is also admitted by the respondents that the apellants had constructed a building on he land in dispute and had been paying electricity bills in respect of the charges arising for the electric pump set used for irrigating the land. Howewver, the appelate authority found that the appellants have failed to establish that when their father and Bharama were residing as members of the joint family ; that the disputed ladn was taken on lease ; that in the partition of 1945, that land was allotted to the share of their father ; and, that regarding the quantum of rent, there had been some discrepancy in the evidence tendered by the mother, Sonu Bai. While on estated that the rent of four bags of paddy and Rs. 50 was paid, Sonu Bai stated that six bags and Rs. 50 was paid as retn and that on the basis of the Record of Rights, showed that the appellants had not been cultivating the land and the respondent had been cultivating the land continuously from 1957.

3. The High Court, on a revision petition filed agaisnt the order made by the appellate atuhroity, agreed with the findings of the appellate authority and dismissed the revision petition.
4. It appears to us that the appellate authority could not have palced any reliance on the subsequent revenue records inasmush as the appellants had constructed the building on the land in dispute ; that the electricity bills had been paid by them ; that the land was in their possession. In the face of this finding of fact, the appellate authority could not raise the presumption under Section 133 of the Act that the entries made in the Record of Rights was correct. When a finding of fact had been recorded that the appellants had been in possession, it will be startling to hold that the respondent was himself cultivating the land. The rent paid by the appellants to the respondent and the partitition in their family had no bearing on the question of possession of the land and cultivation thereof. When, in fact, the Tribunal made local enquiry by spot inspection and had come to the conclusion that the appellants were in possession, that factor should have weighed with the appellate authority, particularly in the face of the admission made by the respondent that the appellants had constructed the building on the land and were paying charges in respect of the electric pump set used for irrigating the land and ought to have held that the appellants were cultivating the land. In addition, the land in question was shown not to be cultivated by the respondent as the respondent was residing nowhere near the land but at a faraway palce and that the land was not cultivated personally by the owner and the persons cultivating the land were not members of their family nor was there any evidence that the appellants were servants or hired labourers on wages and (sic the appellate authority) ought to have, on that basis, held the appellants as deemed tenants in respect of the land. The presumption arising under Section 133 of the Act in respect of the entries made in the record of Rights stoods displaced by the finding of fact recorded that the appellants were in actual possession of the land and were cultivating the same. In the face of such an admission made by the respondent, it is difficult to accept the finding recorded by the appellate authority as affirmed by the High Court that in view of the entries made in the Record of Rights, the appellants could not be stated to be in possession of the land on the relevant date nor were they cultivating the same.

5. In this view of the matter, we set aside the order made by the appellate authority as affirmed by the High Court in revision and restore the order made by the Land Triibunal. The appeal is thus, accordingly, allowed. Considering circumstances of the case, we will direct the parteis to bear their respective costs.