SUPREME COURT OF INDIA

Narasamma

Vs.

State of Karnataka

C.A.Nos.568-571 of 2005

(Tarun Chatterjee and H.S.Bedi JJ.)

19.03.2009

JUDGEMENT

Tarun Chatterjee,J.

1. One Lingachari sold land measuring about 6 Acres 7 Guntas in Serial No. 55 within Gulakamale, Uttarahalli, Hobli, Bangalore, South Taluk, Karnataka, (hereinafter referred to as "the land in dispute"), to one Muniyappa, the father of the appellants, in the year 1954. In 1960, the father of the appellants, Muniyappa sold the land in dispute in favour of one Ashwathaiah who in turn sold it to one P. Ramaiah, who also in his turn sold the land in dispute to Rama Reddy, the respondent herein. On or about 1960-61, the respondent, created a tenancy right in favour of the father of the appellants in lieu of share of crop for two years. The Record of Rights was published in the year 1969 which recorded the appellants as tenants and the respondent as landlord relating to the land in dispute. The Record of Rights further recorded that the type of cultivation was Gutha (Rent). The respondent, who was the landlord in respect of the land in dispute, in the year 1971, filed an application for recovery of rent against the appellants before the Additional Munsif, Bangalore in Rent Recovery Case No.114 of 1971. An order was passed in favour of the respondent on 29th of June, 1972 directing payment of arrears of rent in the aforesaid recovery case. The *Karnataka Land Reforms Act, 1961* (in short, "the Act") was amended on 1st of March, 1974 and Sections 44, 45 and 48A of the Act entitled all agricultural tenants to apply under Form 7 for confirmation of ownership. In view of the above, Muniyappa, the father of the appellants, filed Form No.7 to register him as an occupant in respect of the land in dispute before the Land Tribunal under the Act. Muniyappa died on 3rd of October, 1976 during the pendency of the said application.

> “In 1977, the appellants filed a fresh Form No.7. By an order dated 24th of July, 1979, the Land Tribunal disposed of the application filed by the appellants after, inter alia, making the following findings:- (i) Muniyappa, the father of the appellants, cultivated the land for two decades;
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> (ii) Adjacent landowners, deposed that the land in dispute was in possession and cultivation of the appellants on lease basis.

(iii) The names of the appellants in respect of the land in dispute were recorded in the Record of Rights for the years 1973-74 as cultivators also on lease basis.

(iv) The respondent-landlord admitted factum of tenancy by claiming rent for the period from 1966-72 by filing an application for recovery of arrears of rent for the years 1966-72 in respect of the land in dispute in RRC Case No.114/71 wherein an order was passed on 29th of June, 1972 decreeing the case for payment of arrears of rent;

(v) The appellants were entitled to inherit the tenancy rights and, therefore, entitled to be registered as occupants in respect of the land in dispute.

(vi) The tribunal also recorded that the appellants had made out a prima facie case so far as their possession and cultivation of the land in dispute as tenants, were concerned."

2. In spite of the aforesaid findings, the Land Tribunal rejected the application of the appellants simply on the ground that since the tenants were claiming the land in dispute as their own, they had not established their tenancy rights. Feeling aggrieved by the aforesaid order of the Land Tribunal, a writ petition was moved at the instance of the appellants before the High Court which by its order dated 5th of February, 1985 remanded the case back for fresh disposal after setting aside the said order for reconsideration of the said application after re-assessing the entire oral and documentary evidence on record. This order of the High Court was, however, not challenged either by the appellants or by the respondent.

3. After remand, the Land Tribunal again by its order dated 12th of June, 2002 rejected the application of the appellants and directed the Tehsildar to take further action, inter alia, on the grounds that :-

"(i) Entries in the Record of Rights relating to the land in dispute were forged ;

(ii) No co-relationship existed between the Rent Recovery Proceeding and the tenancy proceedings."

4. Feeling aggrieved by the aforesaid order of the Land Tribunal, a writ petition was filed in the High Court which was disposed of on 6th of June, 2003 by an order in which the learned Single Judge of the High Court had come to the conclusion that the appellants were in possession of the land in dispute. However, it was held by the High Court that the appellants must produce some materials to show that the appellants had acquired tenancy rights in respect of the land in dispute without considering the findings of the Rent Recovery proceedings and admission of the respondent on the question of possession and tenancy of the appellants in respect of the same. In appeal, the Division Bench of the High Court also confirmed the order of the learned Single Judge after making, inter alia, the following observations:- "The appellants-petitioners have not been able to show that they were in

possession of the land and the learned Single Judge on consideration found that in the absence of any material produced before the Tribunal, the petitioners cannot take advantage to get the tenancy rights in their favour, though they may be in possession. The learned Single Judge observed that mere possession does not indicate the status and therefore held that the Tribunal was justified in rejecting their request as they have failed to prove their tenancy."

> "A reading of this finding of the Division Bench of the High Court would only lead us to hold that the findings arrived at on the question of possession of the appellants relating to the land in dispute were contradictory. At one place, the Division Bench observed that the appellants could not show that they were in possession of the land in dispute and in another place the Division Bench observed that they may be in possession, but such possession cannot lead the court to hold that the appellants had acquired tenancy rights relating to the land in dispute."

5. Feeling aggrieved by the order of the Division Bench, the present Special Leave Petitions were filed by the appellants in this Court, which on grant of leave were heard in the presence of the learned counsel for the parties.

6. Having heard the learned counsel for the parties and after going through the materials on record, the only question that needs to be decided in the present appeals is whether the land in dispute was tenanted on 1st of March, 1974, i.e. the day on which the Act was amended and Sections 44, 45 and 48A of the Act were introduced. As noted herein earlier, the appellants had brought on record the following documents and evidence to substantiate their case of tenancy in respect of the land in dispute on the notified date :-

> "(i) Admission of the landlord- respondent made in the year 1960- 1962.
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> (ii) Judgment and order dated 29th of June, 1972 in Rent Recovery proceedings for the period from 1966 to 1972.
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> (iii) Entries in the revenue Record of Rights relating to land in dispute from 1969 to 1997.
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> (iv) Evidence of independent witnesses of adjoining areas;"

7. It may be mentioned herein that against the aforesaid documents and evidence produced by the appellants in order to prove their possession and right of tenancy relating to the land in dispute, the respondent, however, had failed to produce any document to establish that he was in possession of the land in dispute on the relevant date i.e. on 1st of March, 1974.

8. From a bare perusal of the orders passed by the Land Tribunal and the learned Single Judge as well as the Division Bench of the High Court, it is clear that the appellants were found to be in possession and in cultivation of the land in dispute. The only ground on which the claim of tenancy right of the appellants was not accepted either by the Land Tribunal or

by the High Court was that the appellants had failed to produce any document or material to show that they had acquired tenancy rights in respect of the land in dispute on the appointed day. In view of our findings made herein above that the appellants had produced sufficient material to prove that they had acquired the tenancy right in respect of the land in dispute, viz., the admission of the landlord respondent in the rent recovery proceedings that –

> "(i) The appellants were tenants and, therefore, were liable to pay rent to the respondent in respect of the land in dispute.
>
> (ii) The entries in the record of rights in respect of the land in dispute would also show that the type of cultivation was gutha (rent).
>
> (iii) The adjacent landowners in their deposition also deposed that the appellants were in possession and were in cultivation of the land in dispute on a lease basis.
>
> (iv) The names of the appellants in respect of the land in dispute were recorded in the record of rights as cultivators on lease basis."

9. Appearing on behalf of the appellants, Ms. Indu Malhotra, learned senior counsel, at the first instance, contended that while deciding the issue raised before the High Court as well as the Land Tribunal, the entries in the relevant Record of Rights relating to the land in dispute and also the above aspects of the matter were not at all considered. Relying on a judgment of this Court in the case *Ningayya Erayya Hiremath & Ors.*[1], Ms. Indu Malhotra, learned senior counsel contended that in view of the findings of fact arrived at by the Land Tribunal as well as by the High Court that on 1st of March, 1974 and thereafter, the appellants continued to be in possession of the land in dispute and in cultivation of the said land and therefore, they were necessarily entitled to registration as an occupancy right holder.

10. The learned counsel appearing for the respondent contested the aforesaid submission of the learned senior counsel appearing for the appellants and sought to argue that the appellants had miserably failed to prove that they were tenants under the deceased Rama Reddy or his predecessor-in-interest and in view of the fact that the two courts concurrently found that although the appellants were in possession of the land in dispute had failed to prove their status in respect of the land in dispute, would not be entitled to any relief.

11. Having examined the aforesaid submissions of the learned counsel for the parties and after going through the impugned order and the materials on record, we are of the view that the judgment of the High Court is liable to be set aside for the reasons mentioned hereinafter. Taking into consideration the findings of fact on the question of possession arrived at by the High Court as well as the Land Tribunal that the appellants were in possession and in cultivation of the land in dispute and considering the admission made by the landlord/respondent that the appellants were tenants in respect of the land in dispute in earlier recovery proceedings relating to arrears of rent and considering the fact that on the relevant date of coming into force of the Act, viz., on 1st of March, 1974, the appellants were in possession of the land in dispute, we have no hesitation to hold that the continuous

possession of the appellants which was conclusively found by the Tribunal as well as by the High Court and in view of the admitted fact that the respondent had admitted in their deposition of an earlier proceeding that the appellants were tenants in respect of the land in dispute and the entries in the Record of Rights clearly show that the appellants were in possession of the land in dispute and the nature of cultivation was gutha and further in the absence of any material produced by the respondent to show that in fact the appellants were not tenants in respect of the land in dispute, we are of the view that there is no escape that the appellants had acquired occupancy right in respect of the land in dispute and their names shall be registered as occupancy right holders in respect of the land in dispute. In Siddawwa Kom Udochappa Vaddar (Supra), this Court, while dealing with a case under the Act, observed as follows:

> "The short question which falls for consideration is that on the relevant date, that is on 1.3.1974, when the Act came into force, as to who has been in possession of the land. If the first respondent has been in possession thereof and cultivating the same, necessarily, is entitled to registration of occupancy right. Since the appellant on the relevant date was not in possession thereof and the concurrent findings of the Tribunal, learned Single Judge and the Division Bench, we do not think there is any merit in this appeal which is accordingly dismissed."
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> A plain reading of this decision of this Court would clearly show that if possession in respect of the land in dispute on the relevant date was in favour of the appellants showing them to be in cultivation and possession of the same are entitled to registration of the occupancy rights in respect of the land in dispute. A decision was cited by the learned counsel for the respondent in the case of Damu Ganu SCC 182] to show that this Court would not be entitled to interfere with concurrent findings of facts based on appreciation of evidence and, therefore, no error of law was committed."

12. In our view, this decision on the face of it cannot be applied in the facts and circumstances of the present case because the aforesaid decision was rendered in a case which was covered under the Bombay Tenancy and Agricultural Lands Act, 1948. Furthermore, in the aforesaid decision, the concurrent findings on the question of possession was not in favour of the person who was claiming to get his name registered as an occupancy right holder in respect of the land in dispute, whereas in the present case, the concurrent findings of fact on the question of possession by the High Court as well as by the Land Tribunal stood in favour of the appellants. At the risk of repetition, in the present case both the Land Tribunal and the High Court held that the appellants were in possession of the land in dispute and the entries in the Record of Rights also stood in their names showing that the nature of cultivation was gutha (rent) and also the appellants were in possession of the same. As noted herein earlier, the respondent had failed to produce any document or material to show to the contrary. Therefore, the onus was on the respondent to show by producing material that the appellants had not acquired any status of occupancy right although they were found to be in continuous possession of the land in dispute. (See : *Gajadhar Prosad Singh & Ors. vs. Sheo Nandan Prosad Singh & Ors.*[2]. Since the respondent had failed to

produce any material or document to prove that the appellants had not acquired any status in respect of the land in dispute and had failed to show that the entries in the Record of Rights were wrong, we do not find any ground to reject the claim of the appellants for conferring status of occupancy right holder in respect of the land in dispute. In view of our discussions made hereinabove, we do not find any support to rely on the decision of this Court in the case that since the appellants had failed to prove their status of tenancy in respect of the land in dispute, they were not entitled to any relief. It is true that the entries in the revenue record cannot create any title in respect of the land in dispute, but it certainly reflects as to who was in possession of the land in dispute on the date the name of that person had been entered in the revenue record. That apart, in that decision of this Court, on which reliance was placed by the learned Counsel for the respondent, it was admitted that the landlord did not receive any rent from the person in possession. Relying on this admission of the person from whom no rent was received, it was found that the plea of tenancy was a false one. As noted herein earlier, in the present case, not only the revenue records clearly show that the appellants were in continuous possession of the land in dispute, and the admission of the respondent that the appellants were tenants in an earlier recovery proceedings, and in the absence of any document having been produced by the respondent to show that the entries in the Record of Rights were wrong, it is not possible for us to rely on the aforesaid decision cited by the learned counsel for the respondent. So far as the decision of a learned Judge of the Bombay High Court in the case of Rita Premchand & is concerned, there is no dispute about the proposition enunciated in the said decision which says that the entries in the revenue records are not dispositive or conclusive on questions of title and that the revenue record cannot create any title and are relevant only for fiscal purposes. This proposition is not disputed, nor can we dispute it. In view of our discussions made hereinabove and accepting the principles enunciated in the aforesaid decision of the Bombay High Court we are of the view that the name of the appellants should be registered as an occupancy right holder in respect of the land in dispute. Accordingly, the application of the appellants shall stand allowed and consequent thereupon the orders of the Land Tribunal as well as the Division Bench and the learned Single Judge of the High Court shall stand set aside.

13. For the reasons aforesaid, the appeals are allowed, the impugned judgment of the High Court as well as the judgments of the learned Single Judge and the Land Tribunal stand set aside and the application for recording names of the appellants as occupancy right holders in respect of the land in dispute stands allowed. There will be no order as to costs.

[1] *[1999 (1) SCC 176]*
[2] *[23 CWN 304]*