SUPREME COURT OF INDIA

Kanna Timma Kanaji Madiwal

Vs.

Ramachandra Timmaya Hegde

C.A.No.1300-1301 of 2008

(A.M.Khanwilkar and Dinesh Maheshwari,JJ.,)

27.09.2019

JUDGMENT

Dinesh Maheshwari,J.,

1. In the foreground, these appeals are in challenge to the judgment and orders dated 08.08.2001 and 06.12.2004, passed by the High Court of Karnataka at Bangalore in L.R.R.P. No. 1 of 1996 and Review Petition No. 484 of 2002 respectively, arising out of an application filed by the father of the appellant for grant of occupancy rights in respect of 4 parcels of agricultural land situated at Bilagi Village, Siddapur Taluk, Uttara Kannada District, Karnataka [‘the land in question’]. However, in the background is a labyrinth of litigation/s, spreading well over half a century, as briefly summarised infra.

2. The relationship and respective position of the parties involved in the may be noticed at the outset and as follows:

> 2.1. One Kanna Kulage of the village aforesaid had three sons namely, Gutya, Timma and Ganappa. The appellant herein, Kanna , is son of Timma and thus, nephew of Gutya. It is not in dispute that Ganappa had left the family and nothing in his regard is now involved in this litigation. Gutya had married Gauri but it is the case of the appellant that Gutya’s wife Smt. Gauri left him; remarried one Jatya; and begot two children from her second marriage with Jatya . The land in question originally belonged to the respondents herein but admittedly, Gutya, paternal uncle of the appellant, was inducted as tenant therein.

3. The relevant background aspects of the matter could now be noticed, in brief, as follows:

> 3.1. It is the case of the appellant Kanna that due to the ill-health of his uncle Gutya, the land in question was being cultivated by his father Timma (brother of Gutya); and Timma was paying the rents to the respondents on behalf of Gutya, whose health kept on deteriorating.

3.2. It is further the case of the appellant Kanna that on 13.02.1960, Gutya executed a Will and got it registered, bequeathing all his properties in favour of his brother Timma (father of the appellant). Gutya expired on 19.06.1963. After the demise of Gutya, the Tahsildar conducted an enquiry and, on 08.07.1963, effected mutation entry No. 1080 in the name of Timma in relation to the land in question that had been in cultivatory possession of Timma.

3.3. Later on, the said Smt. Gauri filed her objections to the mutation entries made in favour of Timma but the said objections were overruled. However, the Assistant Commissioner, in appeal, remanded the matter for consideration afresh and, after such remand, the authority concerned, by its order dated 18.05.1965, ordered that the mutation entry of the land in question be made in the name of Smt. Gauri.

3.4. Having thus succeeded in getting the land in question mutated in her favour, the said Smt. Gauri purportedly surrendered the tenancy rights in favour of the respondents herein on 16.06.1965.

3.5. In the wake of the developments aforesaid, Timma filed a civil suit4 for declaration of possessory title and injunction against Smt. Gauri with reference to the Will of his brother Gutya, while also joining his other brother Ganappa and the present respondents as defendants. In her written statement, Smt. Gauri denied the execution of Will by Gutya and validity thereof; and also denied that Timma was in possession of the land in question. The respondents-landlords denied that Timma could have derived any right by virtue of the Will executed by Gutya.

3.5.1. On 30.06.1969, the suit aforesaid was decreed by the Trial Court with the findings, inter alia, that Smt. Gauri left the company of Gutya and contacted marriage with Jatya; that after leaving the company of Gutya and upon her re-marriage, Smt. Gauri was no longer an heir of Gutya and, therefore, she was not entitled to inherit or surrender the tenancy rights of Gutya in the land in question. The Trial Court also held that Timma was in lawful possession of the land in question and the Will dated 13.02.1960 was validly executed by Gutya .

3.5.2. Assailing the decree aforesaid, appeals were preferred in the Court of District Judge, Karwar by the respondents-landlords and Smt. Gauri . The First Appellate Court reversed the decree of the Trial Court and remanded the matter for reconsideration of the question as to who was the tenant after the death of Gutya. This order of remand was challenged by Timma before the High Court of Karnataka . The High Court, by its order dated 08.03.1977, disapproved the order of remand and restored the matter to the file of First Appellate Court for disposal on merits, after observing that the question involved was not of 'tenancy' but the one relating to the 'succession of Gutya's tenancy'. decree of the Trial Court was transferred to the Court of Civil Judge, Sirsi . Ultimately, the First Appellate Court dismissed the said appeal by way of the judgment and decree dated 18.12.1990 while holding that the Will executed by Gutya in favour of Timma was proved and

the same was validity registered.

The First Appellate Court also confirmed the findings of the Trial Court that Smt. Gauri had re-married and ceased to be the heir of Gutya. While referring to the provisions contained in sub-section (1) of Section 27 of the Bombay Tenancy and Agricultural Lands Act, 1948, ['the Act of 1948'], the First Appellate Court also observed that the said provision prohibited alienation of leasehold land by a tenant but testamentary succession was not prohibited.

3.5.4. The decree so passed by the First Appellate Court was challenged by the present respondents by way of a second appeal that was considered and dismissed by the High Court on 08.07.1998. The present respondents attempted to challenge the judgment of the High Court in this Court but the petition for Special Leave to Appeal was also dismissed on 26.02.2001. findings came to be recorded conclusively that Smt. Gauri was not the heir of Gutya; that Timma was the heir of Gutya; that Gutya had executed the Will in favour of Timma bequeathing his rights in the land in question; and that Timma was in possession of the land in question. These findings attained finality with dismissal of appeals and the petition for Special Leave to Appeal in this Court.

3.6. The other line of proceedings commenced on 08.08.1974 with filing of an application in Form No. 7 under Section 48-A of the Karnataka Land Reforms Act, 1961 ['the Act of 1961'] by Timma for grant of occupancy rights in respect of the land in question before the Land Tribunal, Siddapur . This application was moved by Timma after the decree of the Trial Court in the above-referred civil suit but during the period when the appeal against such decree was pending. During the pendency of application before the Land Tribunal and also the appeal proceedings relating to the aforesaid civil suit, Timma expired and hence, his wife and children were brought on record as his legal representatives.

3.6.1. On 22.09.1981, the Land Tribunal rejected the claim for grant of occupancy rights in respect of the land in question while observing that the appellant (son of Timma) had made a statement of admission that he was not the tenant of the land in question.

3.6.2. The aforesaid order of the Land Tribunal was challenged by the appellant Kanna, son of Timma, before the High Court by filing a writ petition and, inter alia, disputing the purport of the statement alleged to have been made by him before the Land Tribunal. During the pendency of the said writ petition, the Land Reforms Appellate Authority came to be established and hence, the High Court transferred the matter to the said Appellate Authority. The matter so transferred by the High Court was registered before the Appellate Authority as an appeal against the order of Land Tribunal .

3.6.3. By its order dated 18.07.1988, the Appellate Authority dismissed the said

appeal of the appellant for non-prosecution. The appellant sought restoration of the appeal and recall of the order of default dismissal by moving an application under Rule 9 of the Karnataka Land Reforms Rules. The application so moved by the appellant was dismissed by the Appellate Authority on 26.12.1988, for want of sufficient reasons for absence of advocate on the date of hearing as also for want of an application for condonation of delay of one day in filing the application for recall.

3.6.4. Being aggrieved by such dismissal of the appeal and the application for restoration, the appellant preferred a revision petition before the High Court of Karnataka. The High Court proceeded to dismiss the petition so filed by the appellant by its impugned order dated 08.08.2001, while rejecting the claim of appellant on merits and while observing, inter alia, that: (a) Gutya was the original tenant of the land in question before his demise in the year 1963;

(b) in the application in Form No. 7, Timma failed to plead about the separation of Smt. Gauri from Gutya prior to his demise and, therefore, the alleged disinheritance of Smt. Gauri could not be countenanced, meaning thereby that she remained the legal heir of Gutya; (c) the assignment of interest of tenancy by way of bequeath was barred under Section 21 of the Act of 1961 and, therefore, Timma could not succeed to Gutya's land by virtue of the Will executed in his favour; (d) Gutya and Timma had their respective parcels of land and each of them was cultivating his own parcel; (e) if tenancy was transferred in favour of Timma, it would amount to creation of fresh tenancy, which would be in contravention of the provisions of the Act of 1961; and (f) the appellant had made a statement before the Land Tribunal that he was not a tenant in respect of the land in question. The relevant portion of the order of the High Court reads as under:-

" the petitioner herein cannot succeed to the tenancy right of the deceased Gutya by virtue of the Will alleged to have been executed by the deceased Gutya in favour of his father Thimma, in the presence of the wife of the deceased Gutya by name Gowri who is the legal heir of the deceased to succeed to the tenancy rights of her deceased husband. Further it is also the case of the petitioner herein that when the deceased Gutya fell ill and the father of the petitioner Thimma began to cultivate the lands in respect of which the deceased Gutya was a tenant, the father of the petitioner had started paying the rent in respect of the said lands to the landlord and which were duly accepted by him. Thus according to the petitioner there was almost a fresh lease created in favour of the father of the petitioner Thimma. But it has to be stated that any tenancy created in contravention of Section -5 of the Karnataka Land Reforms Act would be void and therefore any possession pursuant to such fresh lease would also be unlawful and such person is therefore not entitled to the benefit of section-4 of the KLR Act. Even on the ground also, the father of the petitioner was not entitled to seek the registration of occupancy rights in respect of the lands, of which the deceased Gutya was a tenant. Therefore looking from any angle, neither the petitioner nor his father Thimma could be entitled to seek

registration of occupancy rights in respect of the lands, of which the deceased Gutya was a tenant. That apart, the order of the Land Tribunal would clearly indicate that the petitioner herein who gave his statement before the Land Tribunal did not claim tenancy right in respect of the lands, of which the deceased Gutya was a tenant. No doubt it was sought to be contended on behalf of the petitioner that there was no such statement made before the Land Tribunal by the petitioner. But the order of the Land Tribunal would clearly indicate that the petitioner did make such a statement before the Land Tribunal. If the petitioner wanted to establish the fact that the said observation made by the Land Tribunal in its impugned order is factually incorrect, he could have adduced additional evidence before the Land Reforms Appellate Authority. But he did not do so and on the other he allowed the appeal to be dismissed for default. Therefore having given my anxious consideration to the entire matter in issue, I find no merit in this revision petition filed by the petitioner and it is liable to be dismissed."

3.6.5. The appellant attempted to challenge the aforesaid order dated 08.08.2001 in this Court by way of a petition for Special Leave to Appeal but, on 11.03.2002, the same was dismissed as withdrawn with liberty to the appellant to file a review petition before the High Court. The appellant, thereafter, filed a review petition before the High Court with an application for condonation of delay. Even this review petition went through its own meandering course inasmuch as the application for condonation of delay was dismissed by the High Court on 01.08.2003 for want of satisfactory reasons for not approaching the Court within reasonable time. Against this order dated 01.08.2003, the appellant again approached this Court by way of another petition for Special Leave to Appeal that was allowed on 09.07.2004; this Court condoned the delay and remitted the matter to High Court for disposal on merits.

3.6.6. Ultimately, the said review petition and an application therein for production of additional documents were considered on merits and the High Court proceeded to dismiss the same by its order dated 06.12.2004 while essentially reiterating its findings, as occurring in the order dated 08.08.2001, and while observing that there was nothing of any error apparent on the face of record. The High Court observed, inter alia, as under:-

"9. In the instant case, I find that there is no such error apparent on the face of the record and the present review Petition filed by the Petitioner is only an attempt to reargue the matter, which is not permissible in review jurisdiction In the case at hand, the deceased testator Gutya could not have executed the Will in favour of a person who could not be declared to be a tenant having occupancy right and that further the person concerned was not a tenant within the meaning of the Act on the appointed day and hence he was clearly not eligible for occupancy rights. It is needless to point out that the mere possession of the lands will not be sufficient to confer the status of occupancy of tenancy as the sine-qua-non for obtaining the status of occupancy of tenancy rights is that the person concerned must be a tenant

on the appointed day. It has to be stated that the tenancy continues notwithstanding the death of the tenant in occupation of certain lands and such (?) is held by the heirs of such tenant on the same terms and conditions on which he had held prior to his death and the heirs who can take the property are those who are referable to in Section 21 of the Karnataka Land Reforms Act and that in the instant case, the person concerned being not an heir of the deceased tenant and there being a spouse (wife) of the deceased tenant living at the relevant time, could not have obtained the status of the occupancy tenant [sic]. Obviously therefore, the person concerned did not seem to have claimed tenancy rights in respect of the lands in occupation of the deceased tenant Gutya. Under the circumstances, therefore, I find no error apparent on the face of the order which is now sought to be reviewed, so as to call for correction by exercise of the review jurisdiction Considering the limited scope for review under Order 47 Rule 1 of CPC, the additional evidence sought to be adduced by the Petitioner by means of his I. A. No. 1 cannot be permitted..."

3.7. The aforesaid orders dated 08.08.2001 and dated 06.12.2004, as passed by the High Court of Karnataka in the revision petition and the review petition filed by the appellant are the subject of challenge in these appeals. However, the narration about the litigations between the parties would remain incomplete if another proceeding in the form of a civil suit filed by the present respondent No. 1 is not referred . After passing of the aforesaid order dated 08.08.2001 by the High Court, a civil suit was filed by the respondent No. 1, seeking perpetual injunction against the appellant and his brothers. An application seeking temporary injunction was also filed therein, being IA No. 1. The Trial Court dismissed the said application for temporary injunction by its order dated 17.04.2003 while holding that the defendants (appellant and others) were in possession of the suit property.

4. In summation of the chronicle aforesaid, it could be noticed that in essence, there had been two major lines of litigation concerning the parties: One being the civil suit filed by Timma wherein the questions of validity of Will of Gutya and possession of Timma over the land in question were gone into. The suit was decreed with all material findings in favour of Timma and the decree attained finality. The other line of litigation relates to the application in Form No. 7 under Section 48-A of the Act of 1961 filed by Timma for grant of occupancy rights in respect of the land in question. This application, prosecuted by the appellant Kanna after demise of Timma, was rejected; the appeal was dismissed; and the revision petition and the review petition before the High Court were also dismissed by the impugned orders dated 08.08.2001 and 06.12.2004.

5. Assailing the impugned orders dated 08.08.2001 and 06.12.2004, learned counsel for the appellant has strenuously argued that the High Court has erred in law as also on facts in failing to consider the crucial aspect of this matter that in the civil suit filed by Timma, categorical findings came to be recorded to the effect: (a) that the Will dated 13.02.1960, executed by Gutya in favour of Timma in respect of the land in question, was proved and the Will was not invalid; (b) that Timma was the heir of Gutya by virtue of the said Will and Smt. Gauri was not the heir of Gutya; and (c) that Timma was in possession of the land

in question. The learned counsel has emphasised on the submission that the said findings rendered in the civil proceedings have attained finality and are binding on the respondents, who were parties to the said suit; and these concluded findings cannot be reopened in the present proceedings for grant of occupancy rights. The learned counsel has relied on various decisions including that in *Ramchandra Dagdu Sonavane (Dead) by Lrs and Ors v. Vithu Hira Mahar (Dead) by Lrs and Ors*[1]*:* to submit that it is only the civil Courts which have jurisdiction to decide the heirship right of an individual and the Land Tribunal lacks such jurisdiction. Thus, according to the learned counsel, the rights available to Timma, and after Timma to the appellant as his son, could not have been denied in these proceedings.

> 5.1. The learned counsel has also contended that the High Court fell in further error in holding that Section 21 of the Act of 1961 bars assignment of tenancy rights by way of bequeath. The learned counsel has relied on the decision of this Court in Sangappa Kalyanappa Bangi (Dead) through LRs. v. Land Tribunal, Jamkhandi and Ors: (1998) 7 SCC 294 and submitted that the scope and purport of Section 21 of the Act of 1961 stands explained by this Court that a tenant cannot introduce a stranger to the land by means of bequest but there is no bar in bequeathing tenancy rights by a tenant to his heirs, who are related to him by 'legitimate kinship'. The learned counsel has yet further referred to the decision of this Court in *Jayamma v. Maria Bai (Dead) by proposed LRs. and Anr*[2] and submitted that the said decision re-affirms this position and does not in any way differ or detract from the ratio of Sangappa (supra). Thus, according to the learned counsel, rejection of Timma's claim for occupancy rights on the basis of the Will dated 13.02.1960 was wholly incorrect inasmuch as Timma was not a stranger but was related to the tenant by legitimate kinship, being his brother and hence, a Class II heir, in terms of the entry occurring in the Schedule to the Hindu Succession Act, 1956. The learned counsel lastly submitted that the Land Tribunal and the High Court have misconstrued the statement made by appellant regarding his tenancy rights because what was sought to be conveyed by him was this much that Timma was not the original tenant of the land in question but had inherited the tenancy rights by virtue of a Will; and in any event, there was no intention of the appellant to disown his claim, which was being pursued relentlessly.

6. Per contra, learned counsel for the respondents has supported the orders passed by the Land Tribunal and the High Court rejecting the claim for grant of occupancy rights in favour of Timma and has submitted that in view of the prohibition over assignment of tenancy rights by way of bequeath, Timma could not have claimed nor could have exercised any tenancy rights over the land in question on the basis of the Will of Gutya; and the land in question stood reverted to the respondents after the demise of Gutya. The learned counsel has referred to and relied upon the observations of the High Court that disinheritance of Smt. Gauri from the tenancy rights of her husband Gutya could not be countenanced and transfer of the tenancy rights of Gutya in favour of Timma would amount to creation of fresh tenancy rights in contravention of the provisions of the Act of 1961. Learned counsel has also relied upon the observations that the appellant made a

statement before the Land Tribunal about himself being not a tenant in respect of the land in question.

> 6.1. The learned counsel for the respondents has referred to the decision in Jayamma (supra) to submit that the principles expounded therein, in relation to Section 61 of the Act of 1961, do apply with equal force to the case at hand; and bequeath of tenancy rights being prohibited, the High Court has rightly rejected the claim made on the basis of the Will said to have been executed by Gutya.

7. For what has been noticed hereinabove, the principal question calling for determination is as to whether the High Court is right in holding that the bequeath in question, by way of Will dated 13.02.1960 by Gutya in favour of his brother Timma, is hit by statutory prohibition and no rights of tenancy could be claimed on its basis?

8. Having given anxious consideration to the rival submissions and having examined the record with reference to the law applicable, we are clearly of the view that the answer to the question aforesaid could only be in the negative and the impugned orders cannot be sustained.

9. For the purpose of the question aforesaid and in view of the rival submissions, appropriate it would be to take note of the relevant statutory provisions and the principles applicable to the present case.

> 9.1. As regards the applicable statutory provisions, it could be noticed that the Will in question was executed on 13.02.1960 and the executant, Gutya, the original tenant of the land in question, expired on 19.06.1963. At the relevant point of time, the Act of 1961 had not come into force and the tenancy in question was governed by the Bombay Tenancy and Agricultural Lands Act, 1948. The provisions contained in sub-section (1) of Section 27 and Section 40 of the said Act of 1948 read as under:-
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> "27. Sub-division, sub-letting and assignment prohibited.- (1) Save as otherwise provided in Section 32F no sub-division or sub-letting of the land held by a tenant or assignment of any interest therein shall be valid:
>
> Provided that nothing in this sub-section shall prejudicially affect the rights of a permanent tenant:
> Provided further that if the tenant dies,-
>
> (i) if he is a member of a joint family, the surviving members of the said family, and
> (ii) if he is not a member of a joint family, his heirs, shall be entitled to partition and sub-divide the land leased subject to the following conditions-
>
> (a) each sharer shall hold his share as a separate tenant,

(b) the rent payable in respect of the land leased shall be apportioned among the sharers, as the case may be, according to the share allotted to them,

(c) the area allotted to each sharer shall not be less than the unit which the State Government may, by general or special order, specify in this behalf having regard to the productive capacity and other circumstances relevant to the full and efficient use of the land for agriculture,

(d) if such area is less than the unit referred to in clause (c), the sharers shall be entitled to enjoy the income jointly, but the land shall not be divided by metes and bounds,

(e) if any question arises regarding the apportionment of the rent payable by the sharers, it shall be decided by the Mamlatdar, whose, decision shall be final.

40. Continuance to tenancy on death of tenant-(1) Where a tenant (other than a permanent tenant) dies, the landlord shall be deemed to have continued the tenancy on the same terms and conditions on which such tenant was holding it at the time of his death, to such heir or heirs of the deceased tenant as may be willing to continue the tenancy.

(2) Where the tenancy is inherited by heirs other than the widow of the deceased tenant, such widow shall have a charge for maintenance on the profits of such land."

9.2. With advent of the Act of 1961, various enactments relating to the agricultural land and tenancy, including the aforesaid Bombay Tenancy and Agricultural Lands Act, 1948, came to be repealed for the purpose of the territories governed by the Act of 1961. It is for these reasons that reference has been made in these proceedings to the provisions of the Act of 1961. In the Act of 1961, the relevant provisions concerning the present case are contained in sub-section (1) of Section 21 and Section 24, which are more or less in pari materia the erstwhile provisions contained sub-section (1) of Section 27 and Section 40 of the Act of 1948 and read as under:-

"21. Sub-division, sub-letting and assignment prohibited.—(1) No sub-division or sub-letting of the land held by a tenant or assignment of any interest therein shall be valid:

Provided that nothing in this sub-section shall affect the rights, if any, of a permanent tenant:

Provided further that if the tenant dies,—

(i) if he is a member of joint family, the surviving members of the said family, and
(ii) if he is not a member of a joint family, his heirs shall be entitled to partition and sub-divide the land leased, subject to the following conditions—
(a) each sharer shall hold his share as a separate tenant;
(b) the rent payable in respect of the land leased shall be apportioned among the sharers, as the case may be, according to the share allotted to them;
(c) the area allotted to each sharer shall not be less than a fragment;
(d) if such area is less than a fragment the sharers shall be entitled to enjoy the income jointly, but the land shall not be divided by metes and bounds;

(e) if any question arises regarding the apportionment of the rent payable by the sharer it shall be decided by the Tahsildar:

Provided that if any question of law is involved the Tahsildar shall refer it to the court. On receipt of such reference the court shall, after giving notice to the parties concerned, try the question as expeditiously as possible and record finding thereon and send the same to the Tahsildar. The Tahsildar shall then give the decision in accordance with the said finding.

24. Rights of tenant to be heritable.- Where a tenant dies the landlord shall be deemed to have continued the tenancy to the heirs of such tenant on the same terms and conditions on which such tenant was holding at the time of his death."

9.3. In view of the submissions made and for their relevance, the provisions contained in Section 61(1) of the Act of 1961 could also be usefully extracted as under:-

"61. Restriction on transfer of land of which tenant has become occupant.—(1) Notwithstanding anything contained in any law, no land of which the occupancy has been granted to any person under this Chapter shall, within fifteen years from the date of the final order passed by the Tribunal under sub-section (4) or sub-section (5) or sub-section (5-A) of Section 48-A be transferred by sale, gift, exchange, mortgage, lease or assignment; but the land may be partitioned among members of the holder's joint family,

9.3.1. It may, however, be noticed that the prohibition contained in Section 21(1) and the restriction contained in Section 61(1) of the Act of 1961 operate in different fields inasmuch as Section 21(1) occurs in Chapter II of the Act of 1961, making general provisions regarding the tenancy and rights and obligations of a tenant of an agricultural land. Section 61, on the other hand, occurs in Chapter III, dealing with conformant of ownership on tenants by way of their registration as occupants. In other words, the restriction envisaged by Section 61 of the Act of 1961 comes into operation after a tenant has acquired occupancy rights whereas the prohibition contained in "24. Right of tenants to be heritable. -(1) Where a tenant dies, the landlord shall be deemed to have continued the tenancy-

(a) if such tenant was a member of an undivided Hindu family, to the surviving members of the said family, and

(b) if such tenant was not a member of an undivided Hindu family, to his heirs,
on the same terms and conditions on which such tenant was holding at the time of his death.

(2) The interest of a permanent tenant in his holding shall on his death pass by inheritance or survivorship in accordance with his personal law."

Section 21 operates at the stage before acquisition of occupancy rights and in relation to the tenancy simpliciter. This distinction in the fields of operation of Section 21 and Section 61 of the Act of 1961 would be of assistance in comprehension of the two cited decisions of this Court i.e., in the cases of Sangappa and Jayamma (supra).

10. In Sangappa (supra), this Court has dealt with a situation where the dispute related to testamentary disposition of interest in the tenanted land. While observing that bequest under a Will was also covered within the ambit of "assignment" under Section 21 of the Act of 1961, this Court held that such bequest could only be to the heirs of the tenant and not to the strangers to the family of tenant. This Court said, inter alia, as under:-

"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 the 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 ”

(underlining supplied for emphasis)

11. On the other hand, in Jayamma's case (supra), the appellant had filed an application under Section 276 of the Indian Succession Act, 1925 for grant of letters of administration with a copy of Will annexed. The respondents, being wife and children of the testator, denied the fact of execution of Will and hence, the application was converted into a suit. Though the Trial Court decreed the suit but the appeal was allowed by the High Court while holding that the application in question was not maintainable in view of Section 61 of the Act of 1961, for the subject-matter of the testament being agricultural land with occupancy rights, which could not have been assigned. The appellant, legatee under the Will in question, was a neighbour and had not been a member of the testator's family. In appeal before this Court, the decision in Sangappa (supra) was referred. This Court distinguished the said decision as being related to Section 21 of the Act of 1961 and there being stricter embargo on transfer of land where the tenant had become occupant than the land held by a tenant simpliciter. This apart, the appellant was found to be having no legitimate kinship with the testator. It was also found that occupancy rights were granted on 14.10.1981 and Will in question was executed on 20.02.1984; hence transfer was made within the period of 15 years from the date of grant, which was prohibited by law. The appeal was, therefore, dismissed by this Court while observing, inter alia, as under:-

> “18. As we have noticed hereinbefore, that the statutory embargo on transfer of land is stricter in a case where the tenant has become occupant than a land held by a tenant simpliciter. We have also noticed that the embargo on transfer is not only by way of sale, gift, exchange, mortgage, lease but also by assignment. What is permitted under the law is partition of the land amongst the members of the family. Section 61 of the Act is to be read in its entirety.
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> 22. In this case, there is also no dispute that grant of agricultural land with occupancy right in terms of the provisions of the said Act was made on 14-10-1981. The Will in question having been executed on 20-2-1984; the transfer has been made within a period of fifteen years from the date of grant which is prohibited in law.
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> 25. Apart from the fact that the interpretation was rendered having regard to the language used in Section 21 of the said Act which would not ipso facto apply to Section 61 thereof; as thereby a stricter statutory embargo has been imposed on transfer or assignment, the contention of Mr Bhat to the effect that the appellant was a relation of the testator also does not appear to be correct
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> 26. The appellant, therefore, in view of the aforementioned statement was not having any legitimate kinship with the testator of the Will.
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> 27. On a fair construction of Section 61 of the Act, in our opinion, a transfer of agricultural land with occupancy right is permissible only in favour of one of the heirs who would be entitled to claim partition of land and not others having regard to the definition of “family” as contained in Section 2(12) and “joint family” as contained in Section 2(17) of the said Act.”

12. It is at once clear from the provisions and the decisions above referred that in the scheme of the Act of 1948 as also the Act of 1961, when a person had been inducted as tenant, heritable right comes into existence with certain embargo over transferability of such tenancy. In other words, such tenancy continues even after the demise of tenant. If the deceased tenant was a member of joint family, then the surviving members of the joint family; and if he was not a member of joint family, his heirs would be entitled to claim partition subject to the conditions specified. However, the tenanted land cannot be sub-let nor any interest therein could be assigned. In Sangappa (supra), this Court has explained the object behind such embargo that strangers to the family of tenant were not to be allowed to come upon the tenanted land. Even disposition under a Will is held covered within the wide sweep of the expression “assignment” for the purpose of the Act of 1961 but with the significant, and rather pertinent, exception that such embargo does not prevent a bequeath in favour of the heirs noticed in the said provisions. This Court said in no uncertain terms that: ‘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’. This enunciation is neither curtailed nor whittled down in Jayamma’s case (supra).

13. As noticed, the decision in Jayamma (supra) had been on the interpretation of Section 61 of the Act of 1961, where stricter embargo is envisaged, being related to a different provision that operates in a different field and comes into effect after acquiring of occupancy rights. Moreover, in Jayamma's case, the legatee, a neighbour, was found to be having no legitimate kinship with the testator; and the Will in question was executed within the period of 15 years from the date of grant, which was prohibited by law. Hence, the decision in Jayamma's case has no adverse effect on the claim in the present case for the obvious reasons that: (a) the present case relates to the stage before acquisition of occupancy rights; and (b) the legatee of the Will in question before us, Timma, had been none other than the brother of the deceased tenant, Gutya; and the said legatee, being related to the deceased tenant by legitimate kinship, had already been declared to be the successor of the tenant in the civil suit in presence of all the relevant parties, including the respondents, with categorical finding that the wife of tenant had left and ceased to be his heir after having contacted other marriage.

14. On the admitted fact situation of the present case and on the concluded findings, the net position obtainable is as follows: The deceased Gutya was the tenant in the land in question. No doubt, Smt. Gauri was the wife of Gutya and, had she retained this status, she would have been his Class I heir, in terms of the Schedule to the Hindu Succession Act, 1956. However, the concluded findings in the civil suit filed by Timma (with the present respondent being parties thereto) are to the effect that Smt. Gauri left Gutya, contacted second marriage with Jatya, and begot two children from such marriage. In sequel to these findings and in view of the other evidence on record, it was held in the said civil suit conclusively that Smt. Gauri was not the heir of Gutya. It was also held conclusively that Timma was the heir of Gutya; that Gutya had executed the Will in favour of Timma bequeathing his rights in the land in question; and that Timma was in possession of the land in question. These findings have attained finality with dismissal of appeals and ultimately, with dismissal of the petition for Special Leave to Appeal in this Court. Moreover, these findings bind the present respondent fair and square, for they were parties to the said suit and in fact, only they had pursued the matter in appeals, though unsuccessfully. In the face of these concluded findings, we find absolutely no justification that the High Court proceeded in the impugned orders on the premise that Smt. Gauri was the heir of Gutya for being his wife. The effect of the abovementioned findings of the civil Court has been brushed aside by the High Court with a few observations that the fact of existence of the wife of Gutya was not mentioned in the application made by Timma for grant of occupancy rights. As noticed, on the date of filing of such application, the suit filed by Timma had already been decreed by the Trial Court with the findings aforesaid, although the matter was pending in appeal. In any case, the concluded and binding findings of the civil Courts did not lose their worth if the fact about erstwhile wife of Gutya was not mentioned in the application made by Timma for grant of occupancy rights; and the High Court could not have treated such findings as nugatory or redundant.

14.1. So far the legal effect of the said Will by the tenant Gutya in favour of his brother Timma is concerned, as noticed, Timma was definitely related to Gutya by legitimate kinship, being his brother. Hence, the Will is not hit by the embargo,

whether that contained in Section 27(1) of the Act of 1948 or in Section 21 of the Act of 1961. A fortiori, the application made by Timma in Form 7 under Section 48-A of the Act of 1961 for grant of occupancy rights in respect of the land in question could not have been denied.

15. An observation made by the High Court, about the appellant having made a statement before the Land Tribunal as if to give up his claim as tenant of the land in question, has only been noted to be disapproved. It is noticed that the Land Tribunal proceeded to reject the claim in relation to the land in question by way of its order dated 22.09.1981 in a wholly cursory manner with reference to the alleged statement made by the appellant but without appreciating that the statement was required to be understood contextually where certain parcels of land in which Timma was the tenant in his own right were also being described. In that context, it was clarified that Timma was, as such, not the tenant in relation to the land in question; meaning thereby that Timma was not the original tenant. The statement was not incorrect because Gutya was the original tenant qua the land in question. Such a bonafide statement could not have operated against the claim of occupancy rights in respect of the land in question, when the claim was essentially based on the Will in favour of Timma and his cultivatory possession.

16. As noticed, the appeal against the aforesaid order of the Land Tribunal was not decided on merits. Rather, the approach of the Appellate Authority had been a bit too exacting where the appeal was dismissed in default and then, the application for restoration was dismissed with a hyper-technical view of the matter and for delay of one day in filing. In revision petition against the order so passed by the Appellate Authority, the High Court, even without having the benefit of a considered decision of the Appellate Authority, chose to deal with the matter on merits and rejected the claim of the appellant on either irrelevant considerations or while overlooking the effect of the findings in the civil suit between the parties as also the ratio in Sangappa (supra). In our view, while adopting such a course, of deciding the matter on merits without having the finding of the Appellate Authority, it was moreover required of the High Court to examine the record in proper perspective; and, for that matter, the decisions rendered in the civil suit filed by Timma, which carried concluded findings on the basic issues involved in the litigation, ought to have been examined in requisite details.

17. The upshot of the discussion foregoing is that the impugned orders cannot be sustained and it is beyond the pale of doubt that the application filed by the appellant by Timma for grant of occupancy rights in respect of the land in question deserves to be allowed.

18. Accordingly, and in view of the above, the impugned judgment and orders dated 08.08.2001 and 06.12.2004 passed by the High Court of Karnataka in LRRP No. 1 of 1996 and Review Petition No. 484 of 2002 respectively as also the impugned orders dated 18.07.1988 and 26.12.1998 passed by the Land Reforms Appellate Authority and dated 22.09.1981 passed by the Land Tribunal are set aside; and the application in question, as filed by Timma for grant of occupancy rights in respect of the land in question is allowed. The Land Tribunal shall pass necessary formal orders for grant of occupancy rights in

favour of the present appellants, who have acquired such rights as being successors of the rightful legatee of the original tenant.

18.1. The appeals are allowed with the directions and requirements aforesaid. No costs.