KARNATAKA HIGH COURT

Mudakappa

Vs.

Rudrappa

Misc. Second Appeal No. 97 of 1975

(E.S. Venkataramiah, and N. VENKATACHALA, JJ.)

23.02.1978

JUDGEMENT

N. Venkataramiah, J.

1. The plaintiff in O.S. No. 11/1972 on the file of the Munsiff and J. M. F. C., Haveri is the appellant in this appeal. He instituted the said suit for the permanent injunction against the defendants, respondents herein, restraining them from interfering with his possession of the three suit lands bearing R. S. Nos. 134 and 135 of Kittur village and R. S. No. 109 in Maidar village in Haveri Taluk, Dharwar District. The facts of the case briefly are these; There was one Mudakappa, who died several years ago leaving behind him four sons by name: Virupaxappa, Rudrappa (defendant-1), Chinnappa (Defendant-2) and Basappa. In the year 1963 there was a partition in the said family amongst the four sons. At that partition, the properties belonging to the family were divided. The plaintiffs case was that the three lands in question, which were being cultivated by his father Virupaxappa as a sole lessee were not the subject-matter of partition and that on his (Virupaxappa's) death he inherited the lease-hold rights in the said lands. He claimed that defendants 1 and 2 and Fakiravva (defendant-3), the widow of their brother Basappa had no right to interfere with his exclusive possession of the suit lands and was therefore entitled to an injunction as prayed for against them.

2. The defendants pleaded that the leasehold rights in the suit lands originally belonged to the joint family consisting of the four sons of Mudakappa but were not divided amongst them at the partition which took place in the year 1953, since all the members of the family agreed to continue to enjoy the same jointly as lessees. They also pleaded that on the date of the suit they were in possession of the suit lands as joint lessees along with the plaintiff and that no decree for injunction could be passed against them. It was however, admitted by both the parties that the lease in question commenced more than 40 years ago.

3. On the basis of the pleadings, the trial Court framed three issues, viz.,

(1) Whether the plaintiff proves that he was in exclusive possession of the suit property?
(2) Whether the plaintiff proves that the defendants had interfered with his possession? and
(3) To what reliefs the parties are entitled?

4. At tile conclusion of the trial, the learned Munsiff recorded findings on issues Nos. 1 and 2 in the negative and dismissed the suit with costs after holding that the lands in question were being enjoyed by all the members of the family as lessees.

5. Aggrieved by the decree of the trial Court, the plaintiff filed an appeal before the learned Civil Judge, Haveri in R. A. No. 4/1974. The learned Civil Judge, passed an order dated 26-2-1975 setting aside the judgment and decree passed by the trial Court and remanding the case to it to dispose of the same in accordance with Section 133 of the Karnataka Land Reforms Act, 1961 (hereinafter referred to as the Act) since he was of the opinion that the question whether the appellant was exclusively entitled to the leasehold rights or whether the appellant and respondents were jointly entitled to the same on the ground that the leasehold rights were originally held by the joint family, was a question which could be decided only by the Land Tribunal constituted under the Act and that the decision in the suit depended upon the finding to be recorded by the Land Tribunal on that question. Aggrieved by the order of remand passed by the lower appellate Court, the plaintiff has filed this miscellaneous second appeal under Order 43, Rule (1) (u) of the Civil P. C. The above appeal first came up for disposal before a single Judge and on a reference made by him it has come up before us for disposal.

6. It has to be mentioned at this stage that after the decision was given by trial Court, the Act was amended by Karnataka Act 1 of 1974. By the said amending Act, which came into force on 1-8-1974 the original Section 44 of the Act was substituted by the new Section 44 by providing that all lands held by or in the possession of tenants (including tenants against whom a decree or order for eviction or a certificate for resumption was made or issued) immediately prior to the date of commencement of Karnataka Act 1 of 1974, other than lands held by them under leases permitted under Section 5, would, with effect on and from the said date, stand transferred to and vest in the State Government. The new Section 45 was substituted in place of the original Section 45 providing for registration of occupancy rights in the lands which had vested with the State Government under Section 44 in favor of persons who were tenants in possession of the said lands immediately prior to the day on which Karnataka Act 1 of 1974 came into force. The original Section 48 was substituted by the new Section 48 providing for the establishment of Tribunals for the purpose of deciding certain questions specified in Section 112 (B) of the Act. The new Section 48-A was introduced in the Act authorizing the Tribunal to hold an enquiry into the question whether any person was entitled to be registered as an occupant under Section 45 and to make an order either granting or rejecting the application of any such person. Sub- sec. (5)

of Section 48-A specifically provided that where an objection was filed disputing the validity of the applicant's claim or setting up a rival claim, the Tribunal should, after enquiry determine, by order, the person entitled to be registered as occupant and pass orders accordingly. Sub-section (6) of Section 48-A provided that the order of the Tribunal under that Section was final Sub-section (7) of Section 48-A provided that the person who was registered as an occupant had to pay to the State Government as premium an amount specified in order to acquire the occupancy rights in question. Section 112 (B) also was suitably amended conferring power on the Tribunal to make necessary verification or to hold an enquiry and to pass orders in cases relating to registration of a tenant as occupant under Section 48-A; to decide whether a person was a tenant or not; and to perform such other duties and functions that were imposed on it by the provisions of the Act. Section 133 of the Act was also amended by Karnataka Act 1 of 1974. Section 133 is however since substituted by the new Section 133 by the Karnataka Act 27 of 1976. It now reads as follows:

> "133. Suits, proceedings, etc. involving question required to be decided by the Tribunal.-
> (1) Notwithstanding anything in any law for the time being in force-
> (i) no Civil or Criminal Court or Officer or Authority shall, in any suit, case or proceedings concerning a land, other than proceedings under Chapter IV of this Act, decide the question whether such land is or is not agricultural land and whether the person claiming to be in possession is or is not a tenant of the said land from prior to 1st March, 1974;
> (ii) such Court or Officer or Authority shall stay such suit or Proceedings in so far as such question is concerned and refer the same to the Tribunal for decision;
> (iii) all interim orders issued or made by such Court, Officer or Authority, whether in the nature of temporary injunction or appointment of a receiver or otherwise, concerning the land shall stand dissolved or vacated, as the case may be;
> (iv) the Tribunal shall decide the question referred to it under Clause (1) and communicate its decision to such Court, Officer or Authority. The decision of the Tribunal shall be final:
> (2) Nothing in sub section (1) shall preclude the Civil or Criminal Court or the Officer or Authority from proceeding with the suit, case or proceedings in respect of any matter other than that referred to in that sub-section."

7. After Karnataka Act 1 of 1974 came into force, the plaintiff and defendants made applications before the Tribunal constituted under Section 48-A of the Act. The Land Tribunal, Haveri, by its order dated 31-3-1977, held that all the four applicants i. e., the plaintiff and defendants 1, 2 and 3 were jointly entitled to the leasehold rights of the lands in question and were therefore entitled to be registered as occupants jointly.

8. Aggrieved by the order of the Land Tribunal, Haveri, the appellant has filed a writ petition in W. P. 4694/1977 and we are told that the said writ petition is pending.

9. This appeal has to be disposed of in the light of the above events and the learned counsel for the parties have no objection to our disposing of this appeal after taking into consideration the above events.

10. It was argued by Sri Murlidhar Rao, learned Counsel for the appellant, that the question whether the leasehold rights belonged to the joint family or to Virupaxappa, the father of the appellant, was a question which could not be decided by the Land Tribunal as it was not one of the questions which was required to be decided by the Tribunal under the Act and, therefore the lower appellate Court was in error in setting aside the decree passed by the trial Court and remanding the case to it to dispose it of in accordance with Section 133 of the Act. In support of the above submission, he relied upon a decision of
this Court in *Korapolu Hengsu v. Sesu*[1] in which it was held that when the dispute was whether the leasehold right in an agricultural land was joint family property or individual property, it could be decided only by the Civil Court and not by the Land Tribunal under the Act That decision is rendered by a single Judge of this Court. But in

Mudakappa Virupaxappa Kori v. Channabasappa Rudrappa Kori[2] filed by the plaintiff himself against an order of acquittal passed by the Magistrate at Haveri in A case in which he had complained that the accused therein who were claiming joint rights with him had committed criminal trespass on two of the suit lands another learned Judge of this Court has held that whether a tenancy was held by an individual or by some individuals as joint tenants was a question which had to be decided by the Land Tribunal under the Act.

11. Sri Murlidhar Rao, next drew our attention to another decision of this Court rendered by a Division Bench in *Kedari Yellappa Halagekar v. Jyotiba Yallappa Halagekar*[3] The relevant part of the said decision reads as follows:

> "The question whether the suit land is the individual property of the plaintiff or the joint family property of the parties, as contended by defendants 1 and 2, cannot be decided in this suit for permanent injunction where the only question is whether the plaintiff is in lawful possession of the suit land and defendants 1 and 2 are unlawfully interfering with his possession. . . . . The question whether the land was continued on lease and enjoyed by the plaintiff on behalf of the family or in his own individual right is a question which cannot be decided by the Tribunal under the Act. The learned Counsel on both sides did not seriously dispute the correctness of this proposition."

We are of the view, that no reliance can be placed on the above decision by the appellant because the question which arose for consideration was not seriously canvassed by either of the parties before this Court and the learned Judges who decided the case had not taken into consideration the amendments made in the Act by Karnataka Act 1 of 1974. The above case arose out of a suit

instituted in the year 1967 and it has been disposed of on the basis of the law as it stood then without reference to the change in the law. This appeal has to be decided on the basis of Sections 44, 45, 48-A, 112 (B), 132 and 133 of the Act as they stand now.

12. Section 132 provides that no Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under the Act required to be settled, decided or dealt with by the Deputy Commissioner, the Assistant Commissioner, the Tribunal, the Tahsildar, the Karnataka Revenue Appellate Tribunal or the State Government in exercise of their powers under the Act. It also further provides that no order of the Deputy Commissioner, the Assistant Commissioner, the Tribunal, the Tahsildar, the Karnataka Revenue Appellate Tribunal or the State Government made under the Act shall be questioned in any Civil or Criminal Court. The consequence of an agricultural land being held by a lessee immediately prior to 1-3-1974 is that with effect on and from the said date, it would stand transferred to and become vested in the State Government by virtue

[1](ILR (1975) Kant 1499)

[3](R. F. A. 26/1970 decided on 11-6-1975) (Kant)

[2](Criminal Revn. Petn. 473 of 1976, decided on 1-3-1977)

of Section 44 (1) of the Act. The tenants holding such lands, would as against the State Government, be entitled only to such rights or privileges and would be subject to such conditions as provided by or under the Act. Any other rights or privileges which may have accrued to them in such lands before the date of vesting against the landlord or other person would cease and would not be enforceable against the State Government. Under Section 45 of the Act, every tenant would be entitled subject to such restrictions and conditions that are imposed by the Act to be registered as an occupant in respect of the lands of which he was a tenant before the date of vesting and which he had been cultivating personally. Section 48-A prescribes the procedure to be followed by a person entitled to be registered as an occupant under Section 45. For securing such registration, he has to make an application to the Tribunal constituted under the Act for that purpose in accordance with law. Under subsection (5) of Section 48-A, where an objection is filed 'disputing the validity of the applicant's claim or setting up a rival claim, the Tribunal is required to hold an enquiry and determine whether the applicant is entitled to be registered as an occupant or not. Section 112 (B) expressly requires the Tribunal to make necessary verification or hold an enquiry in all cases relating to registration of a tenant as an occupant under Section 48-A, Section 133 of the Act, states that when, in any suit or proceedings concerning a land, the question whether such land is or is not an agricultural land or whether the person claiming to be in possession is or is not a tenant of the said land prior to 1st March, 1974, arises for consideration, such question should be referred to the Tribunal for its decision and the suit or proceedings should be disposed of in accordance with the finding of the Tribunal on the above question. When, as in this case, one person applies for registration of the lands as an occupant in his individual name and three others apply for registration of the said lands in their name along with the other applicant as joint occupants, it becomes the duty of the Tribunal to decide whether only one of them was the sole tenant of the lands in question before the appointed day or whether all of them were jointly in possession of the lands as tenants. Without deciding the said question, it would not be possible for the Tribunal to make an effective order under Section 48-A of the

Act. In order to decide the said question, it becomes necessary for the Tribunal to decide whether the tenancy in question was held by one of them exclusively or by all the applicants jointly. We have to hold that under Section 48-A, the Tribunal has that power having regard to the scope of that section. Whenever a statute confers a duty on an authority to decide a question and a corresponding right on an individual or individuals it has to be assumed that the statute, has, by necessary implication conferred on that authority the power to decide all issues which are incidental and ancillary to the main question to be decided. Otherwise the Tribunal will have to keep all the applications pending until such issues are decided by the Civil Court In fact there is no procedure prescribed by the Act to refer such issues for the decision of the Civil Court. We do not think that it would be reasonable to hold that the Tribunal should await the decision of the Civil Court on such issues, in view of subsection (5) of Section 48-A, which requires the Tribunal to hold an enquiry into all rival claims made in respect of the registration of the occupancy rights in respect of the agricultural lands before disposing of the applications made to it. We therefore hold that the Land Tribunal is competent to decide for the purpose of disposing of the applications under Section 48-A the question whether the lease-hold rights were held exclusively by the appellant or by the joint family consisting of the appellant and the respondents before the partition took place and thereafter by all of them as co-tenants till the appointed day. It is its duty to do so under the Act. The said question could not therefore be decided by the Civil Court in view of Section 132 of the Act

13. In view of the foregoing we hold that the case *Korapalu Hengsu v. Sesu*[4] which takes a contrary view is not correctly decided and we overrule it.

14. The lower appellate Court was therefore right in setting aside the order of the trial Court and remanding the case to the trial court to dispose it of in accordance with Section 133 of the Act, on the date on which it made that order. But, since it is now stated before us that the Land Tribunal has already decided the said question on the applications made to it under Section 48-A and has held that both the appellant and the respondents were entitled to be registered as occupants jointly, it would be unnecessary to refer the very same question again under Section 133 of the Act to the Tribunal. In view of the above, the order of the learned Civil Judge has to be set aside and the case has to be remanded to him to dispose it of in the light of the decision of the Tribunal. It is ordered accordingly.

15. The parties are at liberty to produce a certified copy of the order of the Tribunal before the lower appellate Court. The lower appellate Court shall proceed to dispose of the appeal in the light of that order.

16. In the circumstances of this case, the appellant is liable to pay the costs of the respondents. Advocate's fee Rs. 100/-.
Appeal dismissed.

[4](ILR (1975) Kant 1499)