

KARNATAKA HIGH COURT

Rokyayabi

Vs.

Ismail Khan

Writ Appeal No. 1951 of 1983

(V.S. Malimath, Ag. C.J. and N.Venkatachala, J.)

03.01.1984

JUDGEMENT

V. S. Malimath, Ag. C.J.

1. After admitting this appeal, with the consent of the learned counsel for the contesting parties, we heard the matter finally today.
2. The first respondent alleges that he filed an application for grant of occupancy rights before the Land Tribunal, Tiptur, under Section 48-A of the Karnataka Land Reforms Act, 1961 (hereinafter referred to as the Act). That application having been rejected, he has challenged the order of the Tribunal in Writ Petition No. 42230/82. After the appellant, owner of the lands, was duly served, she made an application I. A. I for appointment of a receiver in respect of the lands in question. The learned single Judge has rejected the said application on merits observing that the averments in the application, if at all may justify the appellant seeking an appropriate interim order of injunction and not an order of appointment of a receiver. The learned single Judge has further held that the application for appointment of a receiver is not maintainable. Hence this appeal.
3. Sri U. L. Narayana Rao, learned counsel for the appellant, contended that the learned single Judge was not right in taking the view that an application for appointment of a receiver cannot be maintained in a writ petition filed under Article 226 of the Constitution of India challenging the order of the Land Tribunal rejecting the application of the applicant made under Section 48-A of the Act for grant of occupancy rights.
4. The learned single Judge has held that Order 40 Rule 1 Civil Procedure Code which provides for appointment of receiver cannot be invoked as a writ petition under Article 226 of the Constitution is not a civil proceeding. For this conclusion the learned single Judge has relied

upon the Explanation to Section 141 Civil Procedure Code Section 141 Civil Procedure Code provides that the procedure provided in the Civil Procedure Code in regard to suits shall be followed as far as it can be made applicable in all proceedings in any court of civil jurisdiction. The Explanation to Section 141 Civil Procedure Code however provides that the expression 'proceedings' includes proceedings under Order 9 but does not include any proceeding under Article 226 of the Constitution. It is therefore held that a proceeding under Article 226 of the Constitution cannot be regarded as a proceeding which would attract the provisions of the Civil Procedure Code.

5. But Sri Narayana Rao invited our attention to Rule 39 of the Writ Proceedings Rules, 1977 framed by this Court under Article 226 of the Constitution, and contended that though the provisions of the Civil Procedure Code are not automatically attracted to a proceeding under Article 226 the provisions of the Civil Procedure Code have been made applicable by the said Rules. Rule 39 of the said Rules reads :-

"39. Application of the High Court of Karnataka Rules etc.,

The provisions of the High Court of Karnataka Rules, 1959, the rules made by the High Court of Karnataka under the Karnataka Court Fees and Suits Valuation Act, 1958, and the provisions of the Civil Procedure Code 1908 shall apply, as far as may be, to proceedings under Article 226 and/or Article 227 and writ appeals in respect of matters for which no specific provisions is made in these Rules."

It is, therefore, clear that though the provisions of the Civil Procedure Code are not made automatically applicable having regard to the Explanation to Section 141 Civil Procedure Code , the provisions of the Civil Procedure Code are made applicable by a specific Rule made by this Court under Article 226. Rule 39 of the said Rules provides that the provisions of the Civil Procedure Code shall apply as far may be to proceedings under Article 226 and writ appeals in respect of matters for which no specific provision is made under the said Rules. We have therefore no hesitation in agreeing with the contention of Sri Narayana Rao that the provisions of the Civil Procedure Code have been made applicable to proceedings under Article 226 to the extent indicated in Rule 39 of the said Rules. Hence it follows that the provisions of Order 40 Rule 1 Civil Procedure Code can be availed of in a proceeding under Article 226.

6. Sri Narayana Rao is also right in inviting our attention to Section 48-C of the Act which empowers the Tribunals in proceedings under Section 48A of the Act to make appropriate interim orders in the nature of the temporary injunction or appointment of receiver in respect of the land or lands for which an application is made under Section 48A of the Act. As the present proceeding under Article 226 arises out of an application made under Section 48A of the Act, it is obvious that by virtue of Section 48C of the Act the concerned parties could make an appropriate application for an interim order of temporary injunction or appointment of receiver in respect of the lands which are the subject matter of the application made under Section 48A of

the Act. Hence, it is not possible to agree with the view taken by the learned single Judge that the application filed by the appellant for appointment of receiver was not maintainable.

7. So far as the merits of the case are concerned we entirely agree with the view taken by the learned single Judge that the facts of this case do not merit appointment of a receiver. The learned single Judge is justified in, observing that the averments at best can only justify appellant seeking an interim order of injunction and that no case has been made out for the appointment of a receiver.

8. Hence this appeal fails and is dismissed. No costs.
Appeal dismissed.