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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated : This the 30th day of May, 1998

BEFORE

THE HON'BLE MR. JUSTICE S.R. BANNURMATH

L.R.R.P. No. 114 OF 1989

BETWEEN:

Bmt. Deveeramma,
w/o Nanjunda Chari,
major, No.14, Pemappa Block,
Munireddypalya,
Bangalore-6 since deceased by L.R.
N.Rudrachari, s/o late
Nanjundachari, No.2,
R.K.Block, JC.Nagar,
Bangalore.6.

... PETITIONER.

(By Sri M.S. Gopal, Adv.)

AND:

1. H.T. Thirumalaiah,
s/o Thimmaiah,
major,
Herur village,
Kunigal Taluk.
 2. M. Narayanaswamy,
Lecturer, since deceased
by his wife Rathnamma,
major, "Kumara Krupa",
Someswara Extension,
Tumkur.
 3. Land Tribunal,
Kunigal Taluk,
by its Secretary.
 4. State of Karnataka, by the
Secretary to Govt. Revenue Dept.
Vidhana Soudha, Bangalore-1. ... RESPONDENTS.
- (By Sri C.M. Basavarya & M.Rudraiah, Adv.for R-1,
mt. K.R. Meena Kumari, HCGP for R-3 & 4)

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This LRRP is filed u/s.121-A of the Karnataka Land Reforms Act against the order dated 31-10-88 passed in APPEAL No.249/86 on the file of the Dist. Appellate Authority, Tumkur Dist, allowing the appeal and setting aside the order passed by the Land Tribunal, Kunigal in KAS.49/76-77.

This LRRP coming on for Hearing this day, the Court made the following:-

O R D E R

This revision petition is filed by the unsuccessful landlady against the order of the Land Reforms Appellate Authority, Tumkur, in Appeal No.249/86 dated 31-10-1988, reversing the order dated 14-11-80 passed by the Land Tribunal, Tumkur and confirming the occupancy rights to the 1st respondent -Thirumalaiah.

The brief facts of the case are that the petitioner is the owner of the land Sy.No. 57/2 in Lakshmidewi Hantha Herur Hobli, Kunigal Taluk. According to the petitioner, in the year 1963 the land was mortgaged by a registered mortgage deed in favour of one Narayana-swamy. After coming into force the Karnataka Debt Relief Act, the Tahsildar/Magistrate by his order dated 26-3-81 declared that the debt is redeemed and that the

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petitioner was entitled for possession. It is contended that after coming into force the the Karnataka Land Reforms Act, 1961 (as amended) taking this advantage of the possession as a mortgagee, the said Narayanaswamy has set up the 1st respondent Thirumalaiah as a tenant and made him to file an application in Form No.7 on 25-6-1976. Admittedly, on that day, time for filing the application in form No.7 had expired. Initially in the year 1987, the Land Tribunal granted the occupancy rights to the 1st respondent which was challenged by the landlord in W.P.No.10337/77. This Court by the order dated 8-9-78 allowed the writ petition and set aside the order of the Land Tribunal and remanded the case for fresh enquiry with the following observations:-

"If the application under Section 48-A (1) of the Act is admitted after condoning the delay the Tribunal shall hold a fresh enquiry without regard

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to the evidence recorded by it after affording a reasonable opportunity of adducing evidence and of being heard to all the parties interested in the land."

After the remand, the Land Tribunal took up the matter for fresh enquiry and after recording the evidence of the witnesses putforth by both the sides by its order dated 14-11-80 rejected the claim of the 1st respondent-tenant. Aggrieved by the same, the tenant approached this Court in W.P.No.1261/81 and the learned Single Judge by his order dated 16-9-81 dismissed the writ petition. However in the writ appeal No. 259/82 filed by the tenant, in view of the amendment Act and establishment of the Karnataka Land Reforms Appellate Authority, the Division Bench directed the writ appeal to be treated as appeal before the Appellate Authority and transferred the case to the Appellate Authority for fresh consideration of validity or otherwise of the order passed by the Land Tribunal.


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The Appellate Authority by the impugned order persuaded to grant the occupancy to the 1st respondent and hence this revision petition.

The learned Counsel for the petitioner, landlady contended that the Appellate Authority has granted the occupancy rights to the 1st respondent without following the directions issued by this Court in the earliest writ petition in as much as though it was prohibited to take into consideration the statements prior to the remand, it has relied upon the same to hold that the 1st respondent is tenant of the land in question. Further it is contended that in the absence of any material evidence produced by the 1st respondent and in view of the admitted revenue records which show the name of the petitioner and thereafter that of Narayanaswamy which have presumptive value under Section 133 of the Karnataka Land Revenue Act has not been properly considered and hence prays for rejecting the claim of the 1st respondent.

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On perusal of the order of the Appellate Authority, it is seen that instead of placing the burden of proving that the tenant was cultivating the land in question at any time or atleast on 1-3-1974 as per the provisions of the Act No.1/74 the Appellate Authority proceeds to grant occupancy rights to the 1st respondent only on the ground that the landlady (petitioner) has failed to prove that she was self cultivating. Under the provisions of the Land Reforms Act, it was for the tenant to prove that he was cultivating the land as a tenant atleast as on 1-3-1974. As admitted by the tenant himself the revenue records do not show that he was cultivating the land as a tenant. There is absolutely not a scrap of paper to show that there was any lease deed or any receipt issued by the landlady for having received the lease amount or crop share. Though at one place the 1st respondent claims that he is cultivating the land on Wara basis for the last more than 30 years by paying half share to the



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petitioner but in the cross examination he has admitted that it was Narayanaswamy who has first leased the land to him. This is totally contradictory statement. Even in form No.7 the claim of the 1st respondent is against the petitioner only stating that the petitioner ~~who~~ has leased the land since 1960. The evidence of Ningamma alleged to be neighbouring land owner also does not support any case of the 1st respondent. On perusal of the evidence of this witness, it appears that he has been set up by the tenant or as alleged by the learned Counsel for the petitioner by the mortgager Narayanaswamy. Nodoubt the evidence of one Smt. Rathnamma, wife of Narayanaswamy shows that the 1st respondent was cultivating the land on lease but she has also shown ignorance as to whether the 1st respondent was cultivating the land even before the land was mortgaged in favour of her husband. ~~Absolutely~~ [✓] no evidence was lead by the 1st respondent to show that he was cultivating

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the land in question ^{as tenant} either under the petitioner
Deveeramma or Narayanaswamy at any point of time.

Though while exercising revisional jurisdiction this Court cannot act as a court of first appeal in view of the clear violation of the directions by the Appellate Authority as there is total misreading of the evidence on record, it becomes necessary for this Court to exercise the revisional jurisdiction to set aside the error committed by the Appellate Authority. As it is noticed that the 1st respondent has failed totally to prove his tenancy at any point of time much less on 1-3-1974, the land Tribunal was justified in rejecting the claim and it was illegal and erroneous on the part of the Appellate Authority to reverse the said finding and grant occupancy rights without any proper basis.

In the result, the revision petition is allowed.
The order dated 31-10-1988 passed by the Appellate Authority, Tumkur, in Appeal No.249/86 is set aside

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and the order of the Land Tribunal dated 14-11-1980
is restored, rejecting the claim of the 1st respondent.
There shall be no orders as to costs.

Sd/-
JUDGE

NSU/-