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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated the 11th day of September, 1998

Before

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

L. R. R. P. No. 4304 OF 1990

1. Bolayane Putta Poojari,
S/o Annaiah Poojari,
major,
R/o Kalkoppa village,
Araga Post,
Thirthahalli Taluk.

2. Smt. Akkani,
W/o late Koraga Poojari,
major,
R/o Hosur-Hobli Village,
Salur - Araga Post,
Thirthahalli Taluk,
Shimoga District. PETITIONERS

(By Sri. K. T. Mohan, Advocate)

-: VERSUS :-

1. State of Karnataka,
by the Secretary
to Government,
Revenue Department,
Vidhana Soudha,
Bangalore-560 001.

2. H.S. Nagappa,
S/o Sandya Poojari,
major,
R/o Hosur Bobli Village,
Salur-Araga Post,
Thirthahalli Taluk,
Shimoga District. RESPONDENTS

(By Sri.S.N.Aswathanarayana, High Court Government Pleader, for Respondent-1 and Sri. U. Panduranga Naik, Advocate, for Respondent-2)

L.R.R.P.(CRP) filed under Section 121-A of the Karnataka Land Reforms Act against the order dated 26-4-1990 passed by the Land Reforms Appellate Authority, Shimoga District, Shimoga, in L.R.A.(W) 884/86 allowing the appeal and setting aside the order dated 14-10-1981 passed by the Land Tribunal, Thirthahalli Taluk, Thirthahalli, in LRT. (7) KSB. BBL. 7/74-75.

This revision petition coming up for hearing this day, the Court made the following:

O R D E R

Being aggrieved by the order dated 26-4-1990 passed by the Land Reforms Appellate Authority, Shimoga, modifying the order dated 14-10-1981 passed by the Land Tribunal, Thirthahalli, the unsuccessful landlords have come up in this revision petition.

The brief facts of the case are: The land in question is Survey No.22 measuring 1 acre 25 guntas of Bobli village. After coming into force the Karnataka Land Reforms Act as amended by Act No.1/1974 Sandya Poojari, father of Respondent-2 Sandya Poojari claiming to be the tenant of the entire extent filed his application in From No.7 for grant of occupancy rights. As the matter was

contested, the Tribunal permitted both sides to lead evidence and on persual of the records and the evidence by its order dated 14-10-1981 held that, as the landlords have not disputed the claim of the applicant in respect of 32.5 guntas out of 1 acre 25 guntas, he is entitled for grant of occupancy rights in respect of the said portion alone. Aggrieved by the same, Respondent-2 approached this Court in Writ Petition No. 2246 of 1986 inter alia contending that the applicant has proved his tenancy in respect of the land in question and the Tribunal was in error in confining the claim only to the extent of 32.5 guntas instead of the entire extent of 1 acre 25 guntas. During the pendency of the proceedings before this Court, as the provisions of the Land Reforms Act was amended and the Appellate Authority was constituted, the writ petition was transferred to the Appellate Authority as an appeal. Before the Appellate Authority, on such transfer, again opportunity was given to both sides to substantiate his claims in respect of the rejection and after giving such opportunity and considering the material the Appellate Authority held that the Tribunal was not justified in rejecting the claim of Respondent-2 so far as the remaining area is concerned. It is to be mentioned

here itself that the grant of occupancy rights by the Land Tribunal in respect of 32.5 guntas was neither disputed nor challenged by the petitioners herein before the Appellate Authority and as such it has attained finality. Now, in view of the impugned order passed by the Appellate Authority granting the entire extent of land to Respondent-2 the petitioners/landlords have up in this revision petition.

In this revision petition it is contended that the Appellate Authority has committed an error of law and the evidence on record in granting the land in question to Respondent-2, when there was no documentary evidence produced by the tenant to prove his tenancy; that the presumption arising under Section 133 of the Land Revenue Act regarding the entry has not been properly considered by the Appellate Authority or the Tribunal; that, as the names of the petitioners are shown both in Kabjedar and Cultivator columns, the presumption arises in their favour and against the tenant and that the inference drawn and the findings given by the Appellate Authority are wholly unwarranted and are based on assumnptions; that the Appellate Authority ought to have seen that the land in question,

though originally formed a compact block of the entire extent of 1 acre 25 guntas, later in a partition between Petitioners 1 and 2 both have been given 1/2 share each in the land and both were the owners of 32.5 guntas each in the land in dispute and as such merely because the petitioners have admitted or consented for giving 32.5 guntas o Respondent-2, that does not mean that they have consented for the remaining area also. On these and other grounds, the petitioners have prayed for setting aside the order of the Appellate Authority as well as of the Tribunal.

On the other hand, Sri. Panduranga Naik, learned counsel for contesting Respondent No.2 vehemently argued in support of the findings of the Appellate Authority and contended that the Appellate Authority has rightly considered all the records and material evidence placed before it to arrive at the conclusion that Respondent-2 was entitled for grant of occupancy rights in respect of the entire extent of land and not half of it as held by the Tribunal.

Perused the records. At the outset, it is to be noted that the scope and jurisdiction of this Court under Section 121-A of the Land Reforms Act for exercising the revisional jurisdiction is very limited one. This Court can interfere with the findings of the authorities only where there is error of jurisdiction or lack of jurisdiction or where there is total misreading or misappreciation of material evidence on record. Merely because there is possibility of coming to another conclusion on appreciation of the facts, this Court cannot set at naught the finding of facts arrived at by the authorities, as if this Court is a court of first appeal. Keeping in view the scope and jurisdiction on considering the material placed before the Appellate Authority as well as before the Tribunal, it is seen that though the original applicant Sandya Poojary was shown as tenant of guthedar for the period from 1950-51 onwards, in year 1971-72 when he noticed that his name has been deleted and the names of the petitioners have been entered, he immediately approached the revenue authorities in RTC proceedings and as the RTC Proceedings were pending the Land Reforms Act came into force, the matter was again sent back to the Tribunal. Thus at undisputed point of time 1971-72

Respondent-2 has raised objections for deleting his name and entering the names of the petitioners herein in the revenue records in respect of the land in question. As such no substantial value can be drawn as the revenue records were doubtful in nature. Since the petitioners have not proved as to how suddenly their names were entered deleting the name of the original tenant and under what proceedings. The contention of the petitioners that, though the land in dispute originally formed a compact block between the petitioners, the same was devided into 2 blocks of 32.5 guntas each is also incorrect as the revenue records relied upon by the petitioners and produced before the Tribunal and the Appellate Authority by themselves go to show that the entire land has remained as a compact block measuring 1 acre 25 guntas and not divided or sub-divided into 2 different portions. The admission of the petitioners that the tenant was cultivating the land in question, though only half area and the subsequent conduct in not challenging the same before any authority would go to show that the tenancy of the original applicant is not disputed. The only dispute is regarding how much area he was cultivating. The Appellate Authority has come to the conclusion that the tenant was

cultivating the entire extent and not half area as claimed by the petitioners herein and this finding arrived at was only on the basis of appreciation of evidence of independent witnesses before the Tribunal as well as before the Appellate Authority. As the findings arrived at by the Appellate Authority are basically findings of facts based on appreciation of evidence, this Court decline to interfere with such findings of facts and as such this revision petition is liable to be dismissed being devoid of merits.

In the result, this revision petition fails and is dismissed.

Sd/-
JUDGE

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