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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 23rd day of February 1998

B E F O R E

THE HON'BLE MR. JUSTICE H.N. NARAYAN

C.R.P. No.364/1990

BETWEEN :

Sri. T.N. Lakshmana,
S/o. Late M. Narasappa,
Age: 41 years,
No.139, B-2 BDA Quarters,
Domlur II Stage,
Bangalore - 71.

.. PETITIONER

(By Sri. R. Sudarsan, Adv.)

AND :

1. The Secretary to Govt.
of Karnataka,
Revenue Department,
Vidhana Soudha,
Bangalore - 1.

2. Smt. Kamalakshamma,
W/o. Sri T. Anjanappa,
Thovinakere,
Koratagere Taluk,
Tumkur District.

3. Sri. Malleshanna,
S/o. Parvathaiiah,
Teetha Kolala Hobli,
Koratagere Taluk,
Tumkur District.

4. The Land Tribunal,
Koratagere,
by its Chairman.

.. RESPONDENTS

(By Sri. Srinivasa Reddy, HCGP,
for R1 & 4,
Sri. R.B. Sadashivappa, Adv.
for R2 & 3)

This C.R.P. is filed under Sec.115 of CPC, against the Order dt.10.8.1989 in Appeal No.LRA. 135/87 on the file of the Dist. Addl. Land Reforms Appellate Authority, Tumkur, dismissing the appeal and confirming the Order passed by the Land Tribunal, Koratagere Taluk, in No.LRA. CR.575/75-76 and etc.,

This C.R.P. coming on for hearing this day, the Court made the following:-

O R D E R

This revision under Section 121A of the Karnataka Land Reforms Act is directed against the order of the land Tribunal, Koratagere and Appellate Authority, Tumkur. The second respondent herein filed an application in Form No.7 before the land Tribunal, Koratagere claiming occupancy rights in respect of the land bearing survey No.11/2 measuring 1 acre 39 guntas in Mudigowdanahalli village, Koratagere Taluk Tumkur Dist. The third respondent Malleshanna - owner had no objection in conferring occupancy rights in her favour. Upon these admitted facts, the Tribunal granted occupancy rights in favour of the second respondent vide its order dated 17-6-1981. The petitioner challenged the said order in a writ petition contending that the disputed land was purchased by his father Makenarasappa and the sale deed

was a nominal one but, obtained in the name of the third respondent as Mekenarasappa was due some money to Malleshanna. Certain other allegations were also made in the writ petition claiming 1/3rd share in the disputed land. The order of the Tribunal was challenged on the additional ground that one of the members of the land Tribunal was a close relative of the applicant viz. the tenant. After the constitution of the Appellate Authority in the districts, the matter came to be referred to the Appellate Authority, Tumkur. The Tribunal had recorded certain evidence and passed a very peculiar order dismissing the appeal but, conferring the occupancy rights by setting aside the order of the Tribunal. It is this order which is in challenge again by the son of the said Mekenarasappa who allegedly purchased the land in the name of the third respondent.

2. The learned counsel for the respondents 2 and 3 has failed to convince the court as to the locus standi of the petitioner to question the order of the land Tribunal. The Appellate Authority has not considered this question at

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all while disposing of the matter. The trial Court has rightly come to the conclusion that it is a clear case of tenancy made out by the second respondent and that there is no difficulty to grant occupancy rights in her favour. It is a case where the land Tribunal granted occupancy rights after the consent memo filed on behalf of the land lord. In case of no dispute regarding the tenancy, there was no necessity for the Tribunal to hold further enquiry in the matter.

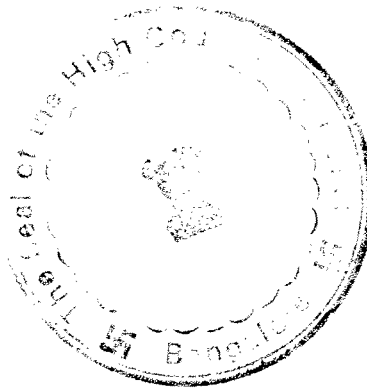
The finding of the Appellate ^{Authority} Court, in fact, discloses that there was abundant material to show that it was a tenanted land and that it was in occupation of the second respondent. It is difficult to comprehend the nature of the order passed by the Appellate Authority. While dismissing the appeal it has set aside the order of the land Tribunal but, at the same time, conferred the ~~grant of~~ occupancy rights in favour of the second respondent. However, the occupancy right granted by the Tribunal cannot be disturbed in view of the clear finding given by the Appellate Authority which is passed on evidence. The petitioner has no right over the property whether it is a case

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of the nominal sale deed taken by his father in favour of the third respondent or it is a case of benami transaction. It is for him to claim his right in a proper manner before a proper forum by filing a properly constituted suit or other proceedings. Therefore, this revision really lacks merit and bonafide and hence, it is dismissed.

Sd/-
JUDGE



rs/-