6

107

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 9TH DAY OF SEPTEMBER 1998

BEFORE:

THE HON'BLE MR.JUSTICE M.F.SALDANHA

L.R.R.P.NO. 2890/1992, C/w.
L.R.R.P.NO. 3765/1989.

BETWEEN:

B.E.Shankar Setty,
son of late B.Eswara Setty,
aged about 61 years,
Agriculturist, Kuvempu Road,
Shimoga City. ... PETITIONER

(By Sri R.Gopal, Advocate.,)

A N D:

1. Suresh son of Nanjunda Setty,
aged about 35 years,
Shivamurthy Circle,
Savalanga Road,
Shimoga City.

2. Sri.Sringeri Mutt, Sringeri,
Chickmagalur District,
represented by its Administrator.

3. State of Karnataka, by its
Secretary, Revenue Department,
Vidhana Soudha, Bangalore. ... RESPONDENTS

(By Sri R.V.Jayaprakash, for R-1.,)
(" Smt.M.R.Shanthakumari, HCGP., for R3.,)

---

(2) L.R.R.P.NO.3765/ 1989

BETWEEN:

Suresh,
S/o.Nanjunda Setty,
aged about 35 years,
Shivamurthy Circle,
Savalanga Road,
Shimoga. ... PETITIONER

(By Sri R.V.Jayaprakash, Advocate.,)

AND

A N D:

1. B.E.Shankar Setty,
S/o Late B.Eswar Setty,
aged about 61 years,
R/o:Kuvempu Road,
SHIMOGA.

2. The State of Karnataka
by its Secretary,
Revenue Department,
Vidhana Soudha,
Bangalore-560 001.

3. The Land Tribunal, Sringeri,
by its Secretary,
Sringeri Taluk,
Chickmagalur District.

4. Sri Sringeri Mutt,
Sringeri, by its
Administrator. ... RESPONDENTS

(By Smt.M.R.Shanthakumari, HCGP., for R2 & R3.,)
(" Sri R.Gopal and Sri T.V.Ananthamurthy, for R1.,)
" Sri M.V.Balasubramanyam, for R-4.,

L.R.R.Ps filed under Section 121-A of K.L.R. Act against the Order dt. 31-1-89 passed in LRA.NO.128/87 on the file of the District Land Reforms Appellate Authority, Chickmagalur District, Chickmagalur, allowing the appeal and modifying the order passed by the Land Tribunal, in No. LRM.2150-2151/75-76 dt. 28-4-87 etc.,

These L.R.R.Ps coming on for hearing this day, the Court made the following:-

ORDER

ORDER

I have heard the learned Counsel Mr.Gopal who appears for the petitioner in LRRP.NO.2890/92 as also the learned Counsel Mr.Prakash who appears for the petitioner in LRRP.NO.3765/89. These are cross petitions and the same Counsel represent the opposite parties in the other matter. Learned Govt.Advocate has been heard on behalf of the State and the Land Tribunal. The dispute in this case is confined to the apportionment of Sy.No.120 ad measuring 1 acre 23 guntas as the contesting parties before me have not called into question the other aspects of the orders that have been passed. This survey number is really the bone of contention between the two contesting parties before me and I need to mention here that in the appeals that were filed ~~XXXX~~ gave rise to the present petitions, the Appellate Tribunal after a detailed hearing and examination of the record held that B.N.Suresh was entitled to occupancy rights in respect of an area of 11 guntas and that B.E.Shankar Setty (as Power of Attorney Holder on behalf of Bhadri) was entitled to an area of 1 acre. The contesting parties have both challenged these orders effectively on the ground

that each of them is entitled to the whole of the allottable area. I use the expression allottable area because the balance 12 guntas has been allotted to another person with whom we are not concerned.

2. I need to record here that the two contestants before me are effectively Cousins in so far as their fathers were brothers. A perusal of

the record indicates that the tenancy rights have devolved over the years and, as inevitably happens there were settlement deeds,partitions, wills etc., The learned Counsel who have appeared in the matter have referred to these documents because each of them have relied on them to the extent that they desire to do so and in order to re-enforce their arguments. I refrain from reproducing the submissions canvassed by the learned Advocates because I do not dispute the fact that if one were to strictly go by what the learned Advocates have contended, more than one conclusion is certainly possible. This is inevitable because any properties that vest in the families with passage of time and particularly when documents or

arrangements are sought to be interpretted, the cause for dispute arises essentially from varying interpretations. The real issue before me is silightly different and I shall summarise it as follows:-

These petitions which assail the appellate orders are in exercise of revisionary jurisdiction of this Court and it is well settled law that as far as the exercise of these powers are concerned, that it must be demonstrated essentially that there is a gross error of law and as the provisions have been interpreted if there is an error apparent on the face of the record which could be construed as an error of law, interference would be justified. The basic approach of the Court is with regard to the question as to whether there has been a consideration of the record by the lower Authority, whether the order passed proceeds on a logical basis and whether the findings or conclusions arrived at are essentially sustainable from the touch stone of both legality and fairness. The law necessarily regulates the powers of interference by this Court to these situations because it is equally well settled law that merely because some

other conclusion is possible, that this Court will not disturb the findings of the lower Authority unless it is demonstrated that they are illegal or perverse.

3. It is on the basis of the applications of these principles, that it is necessary for me to decide as to whether at all the impugned order should be interfered with. I have gone through the exercise of hearing both the learned Counsel at length because it is my belief that it is equally the duty of this Court to give full justice to the parties. I need to record here that all the arguments that have been advanced barring the one with regard to jurisdiction which I shall deal with separately, are within the ambit of appreciation of evidence. Under the scheme of the law as it then existed, the Tribunal was akin to the trial Court and an Appellate Authority was provided for and the scope of a full-fledged appeal was provided for a total review of the evidence but, what one needs to remember is that in the matter of appreciation of evidence, the Appellate Authority is the final Court. If the Appellate Authority had bypassed the important aspects or if the Appellate Authority had

arrived at unsustainable conclusions, it would still be open to this Court to apply a corrective but to my mind, where I am satisfied from the appellate order that there has been a total and complete application of mind and where I find that the findings of the Appellate Authority are perfectly logical and justified and sustainable, there can be no question of re-appreciating the evidence for the limited purpose of ascertaining as to whether some other conclusion is possible or permissible. It is after going through this exercise that I am firmly of the view that the appellate order does not require any interference with. I need to however add that since I have heard the learned Advocates at considerable length and that even on merits, I see nothing wrong with the appellate order.

4. Mr.Jayaprakash, learned Counsel who represents the petitioner in the second petition pointed out to me that having regard to the character of the lands that are involved in this dispute, that the Tribunal had no jurisdiction to hear and decide this case because the adjudication as far as the particular types of lands are

concerned must go to the Deputy Commissioner. He has relied on the decision of this Court in the year 1992 whereby the amendment was struck down as being unconstitutional and he submits that this re-enforces his argument that the Tribunal has no jurisdiction and that therefore, the whole of the order must be set-aside. He contends that the Appellate Authority has not gone into this aspect of the matter but the reason given by him is that in the year 1989 when the appeals were decided, that the decision of this Court had still not come. The simple answer to the objection raised is that at the point of time in the year 1987 when the Tribunal first decided the case, the order of the High Court of 1992 had not yet been delivered and consequently, at that point of time there was nothing wrong with the Tribunal exercising jurisdiction. Again, what I need to clarify is that the Tribunal and the Deputy Commissioner are both the parallel authorities and it was only for administrative convenience that some cases went to one and some to other because the principles of law applicable under the provisions of the Land Reforms Act were the same. While considering the effect of a challenge to jurisdiction, a Court has to guard

against situations wherein the challenge is purely procedural and technical and to see whether the decision has come from an Authority or Forum which did not ~~was~~ otherwise not have the power to decide similar cases. That is the ultimate test and if one were to apply that test, it will be seen that the administrative bifurcation which has now been given effect to after the High Court decision would not result in any legal impediment or any serious miscarriage of justice to either of the parties. In any event, the order of the Tribunal is a composite order involving several parties and ~~of~~ several lands and it would not be in anybody's interest on a technical ground to upset that order at this late stage. Having regard to this position, the objection canvassed on the ground of lack of jurisdiction is overruled.

5. In my considered view, no interference is called for with the appellate order. The two Petitions accordingly fail and stand disposed of. The interim orders, if any, to stand vacated. The learned Govt.Advocate has been heard on merits on behalf of the State and the Tribunal.

Sd/-
JUDGE

MSU/*230998