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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THE 19TH DAY OF AUGUST 1998

BEFORE

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

CIVIL PETITION NO.60/1997 (KLRA)

Smt. Gowramma Shedthi,
major, W/o B. Shivarama
Shetty, R/o Mudradi Village,
Karkala Taluk (D.K.)

..PETITIONER.

(By Sri. K.S. Vyasa Rao, Adv. for Petr.)

-Vs-

1. The Land Tribunal, Udupi
by its Secretary,
Udupi-576 101.
2. Gulabi Shedthi, D/o
Anthamma Shedthi.
3. Krishna Shetty,
S/o Anantha Shetty.
4. Chandrashekara Shetty,
S/o Gulabi Shedthi.
5. Rathi Shedthi,
W/o Badiya Shetty.

2 to 5 are majors and
R/o Mudradi Village,
Karkala Taluk (D.K.)
6. The State of Karnataka,
by Revenue Secretary,
Revenue Department,
Vidhana Soudha, Bangalore.

..RESPONDENTS.

(By Sri. Urval N. Ramanand for R-2 & R-4

Smt. M.R. Shanthakumari, HCGP for R-1 & R-6)

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Civil Petition is filed u/s 151 of CPC r/w u/s 17 of the KLR Act r/w Articles 226 & 227 of the Constitution of India, that for the reasons stated in the accompanying affidavit that this Hon'ble Court be pleased to consider this application and the Appeal No.LRA 1585/88 filed before the Land Reforms Appellate Authority Udupi as Writ Petition in view of amendments of Section 17 of the Land Reforms Act.

This Civil Petition coming on for ORDERS this day, the Court made the following:-

ORDER

I have heard the petitioner's learned Counsel as also the learned Counsel who represents the main contesting respondents-2 to 4. The learned Govt. Advocate has been heard on merits on behalf of R-1 and 6. The petitioner's learned Counsel did advance a strong plea that this is a case which calls for interference because the Tribunal has disallowed the application of the petitioner and has granted occupancy rights in favour of the rival claimant. He has submitted that there is a finding in the order to the effect that the petitioner was in fact in cultivation on the appointed date but that the petitioner did not come within the definition of a tenant or a deemed tenant

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and that the latter part of the finding is incorrect. This is a hotly contested litigation which has had a long history and the learned Advocate who represents respondents-2 to 4 has filed all the relevant documents relating to the earlier proceedings. Inter alia, he points out to me that the petitioner's late husband in his statement had indicated that he was put in possession by his own elder brother. In this background, it is contended that he was paying rent of about 10 Muras, that he was entitled to the grant of occupancy rights.

2. The learned Counsel who represents respondents-2 to 4 relied on an earlier Division Bench decision of this Court reported in I.L.R. 1994(2) KAR 911 wherein, this Court disallowed the plea of tenancy put forward by a pastor of a Church on the ground that he could not be both an Administrator and a tenant at the same time. Mr. Ramanand also drew my attention to the definition of deemed tenant under Sec.4 of the Act and I was quick to point out that the Legislature has totally excluded a family member from the definition and he therefore contended that irrespective of whether the petitioner was in possession or not and irrespective of whether he

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might have even been tendering some part of the produce that he can never be construed as a deemed tenant. This position in law is correct and having regard to the admissions of the petitioner's late husband, it would be impossible to interfere with the findings recorded by the Tribunal. Having regard to this position, the Petition fails and stands disposed of. No order as to costs.


sd/-

JUDGE.



by: GM

C by: 

R by: 

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Assistant Registrar
High Court of Karnataka
Bangalore.