

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

**LPAOW No. 9/2001
CMP No. 71/2009**

Date of decision: 22.2.2011

Savitri Devi Vs Godavari Devi & Ors.

Coram:

***HON'BLE MR. JUSTICE DR. AFTAB H. SAIKIA, CHIEF
JUSTICE HONBLE MR. JUSTICE MANSOOR AHMAD
MIR, JUDGE***

- i) Whether to be reported in Press, Journal/Media : Yes/ No
- ii) Whether to be reported in Digest/Journal : Yes/ No

Appearing Counsel:

For the Appellant(s): Mr. D. R. Khajuria, Advocate
For the Respondent(s): Mr. S. A. Salaria, Sr. Advocate with
Mr. M. L. Bhagat & Mr. M. U. Salaria,
Advocate for private respondents-legal
heirs of respondent No.1.

Per Mansoor Ahmad Mir, J

1. Challenge in this LPA is to the Judgment dated 12.12.2000 passed by the writ court in OWP No. 1027/88 whereby the order passed by the respondent No. 2- J&K Special Tribunal Jammu came to be set-aside, hereinafter for short referred to as impugned judgment.

2. During the pendency of the appeal, Karnail Singh-respondent died and his legal heirs were brought on record vide order dated 23.8.2002.

BRIEF FACTS:

3. Jagan Nath S/o Fangni R/o Panjore Tehsil Jammu executed a document "Deed of Mustajri" for a period of 20 years in favour of Inder Singh S/o Kirpal Singh and Karnail Singh S/o Budhi Singh Rs/o Dubta Tehsil Jammu in lieu of Rs. 1000/- which was received by Jagan Nath in advance. After completing 20 years of Mustajri, Inder Singh and Karnail Singh had to return the possession of the land to Jagan Nath.

4. During the pendency of 'Mustajri', Jagan Nath sold 8 kanals out of said 40 kanals 8 marlas of land to Savitri Devi-appellant, who, after the expiry of 20 years-fixed term made a request to respondent Karnail Singh for handing over the possession of land, was turned down by him constraining the appellant to file a civil suit before learned City Judge, Jammu on 30th of July, 1976.

5. Vide order dated 29th of September, 1976, learned City Judge, Jammu returned the plaint to the appellant for presenting the same before the court of competent jurisdiction, was assailed before learned District Judge,

Jammu. Learned District Judge modified the order and transferred the suit to Collector Agrarian Reforms in terms of Section (19) (e) of the Jammu & Kashmir Agrarian Reforms Act, 1976, hereinafter for short as Act.

6. Collector held that no relation of landlord-tenant existed between the parties and directed the respondent Karnail Singh to handover the possession to the appellant. It is apt to reproduce the operative part of the order dated 14th of November, 1983 herein:-

"The learned counsel for the respondent contended that Mustajri was a fixed term tenancy and Karnail Singh was a tiller in terms of the provisions of the Agrarian Reforms Act, 1976.

I don't find the contention of the learned counsel for the respondent to be convincing because the language of the deed and the entry of Khasra Girdawari of Kharif 2010 is very clear that after the expiry of 20 years from 2010, the land shall be restored to the landlord. A fixed amount had been paid at that time. In Kharif 1971 there is no relationship of landlord and tenant and no mention of rent payable. But for the nomenclature I think 'Mustajri' in this case is not different from mortgage which has to be redeemed under section 10 of the Agrarian Reforms Act. In case respondent is not considered a mortgagee, he can only be defined as a trespasser after kharif 1973. In both the cases, he is liable to be ejected from the land.

In view of the above, it is ordered that possession of the land measuring 8 kanals comprising Khasra No. 331 m of village Panjore Tehsil Jammu be restored to Smt. Samitri applicant. Besides a lump sum amount of Rs. 500/- be also recovered from the non-applicant (Respondent) as the cost of case and part of the benefit derived from the land during the period of litigation and paid to

applicant. The copy of this order be sent to Tehsildar Jammu for immediate execution.”

7. Karnail Singh-respondent feeling aggrieved questioned the same by the medium of appeal before Appellate Authority-Financial Commissioner with powers of Commissioner under Agrarian Reforms Act, 1976, was dismissed while confirming the finding returned by the Collector. It is profitable to reproduce the operative part of the order herein:-

“The earnings etc. from the land were to be deemed to have been adjusted against Rs. 1000/- and not a single penny was paid during the period of ‘Mustajri’. I have considered these issues and am of the opinion that the appellant was not a tenant of the respondent. The land was given to the appellant and Inder Singh only to deprive profits out of it and adjust the amount paid by them. The owner of the land was getting nothing from them during the period of ‘Mustejiri’ which clearly indicates that the income derived out of this land was to be adjusted against the advance payment of Rs. 1000/- made earlier. The relationship of landlord and the tenant did not exist between the parties. On the contrary the appellant could be termed as an inferior owner of the land paying land revenue and abiyana direct to the State and that he was having limited rights of ownership on this land during the period of ‘Mustejiri’. After the period of lease the appellant was liable to be evicted from the land which could even be done under Section 27 of the Agrarian Reforms Act.”

8. Feeling aggrieved Karnail Singh-respondent questioned the same by the medium of revision petition before J&K Special Tribunal, Jammu. Special Tribunal Jammu also upheld the finding returned by the Collector and Appellate

Court and dismissed the revision petition on 10th of June, 1988. It is apt to reproduce relevant portion of the order herein:-

“.....The concurrent finding of fact arrived at by both the courts/ officers below in respect of the deed of “Mustajiri”, failing to create any relationship of landlord and tenant between the parties to this petition, can hardly be upset by this Tribunal functioning in revision, as a revisional court has limited jurisdiction. This Tribunal also, because of the fetters on the ambit of its revisional powers, cannot re-appraise and re-assess the evidence as the conclusion aforesaid, has been drawn on the basis of the construction of deed of “Mustajiri” in the context of the entries of the revenue record and other evidence in the case, which conclusion is in no manner perverse or palpably erroneous.

Even if I were to re-evaluate the evidence, by passing the aforesaid limitations on the powers of the Tribunal on the revisional side, my conclusion would be no different from that of the court below in respect of failure of the deed of “Mustajiri” in creating a relationship of landlord and tenant between Karnail Singh and Mst. Sumitri, the respondent herein, vendee of the dispute land, from Jagan Nath, who had entered into the said “Mustajiri”. The land was given to Karnail Singh the petitioner herein and Inder Singh only to derive the profits out of it and adjust the amount paid by them. The owner of the land was getting nothing from them during the period of “Mustajiri”, which clearly indicates that income derived out of this land was to be adjusted against the advance payment of Rs. 1000/. No rent in cash or kind was paid or was payable under the deed of “Mustajiri” to the owner of the land.”

9. Respondent-Karnail Singh assailed the order of Special Tribunal Jammu by the medium of writ petition No. 1027/88, came to be allowed vide impugned judgment.

10. Writ court without discussing the facts of the case came to the conclusion that deed was a lease deed and the relation of landlord-tenant did exist. Writ court has also lost sight of a very important fact viz. the effect of the document having been executed and signed by Jagan Nath-executant only while as it has neither been executed nor signed by the respondents-Karnail Singh and Inder Singh.

11. Writ court has neither discussed following points nor returned any finding to this effect:-

- i) Whether concurrent finding(s) recorded by all the three courts can be disturbed by the writ court?
- ii) Whether writ court or civil court is within its jurisdiction and competence to decide the issue relating to landlord and tenant-tenancy while keeping in view the provisions of Act and The Jammu and Kashmir Tenancy Act, 1980 (1923 A.D)?
- iii) What was the intention and in what background the document was executed by the executant-Jagan Nath?

- iv) Whether the amount which was already received by Jagan Nath-executant from respondent was a debt?
 - v) Whether dictionary meaning of the word 'Mustajir' can turn the whole deed into a lease deed without having regard to the intention of the parties as well as to the concurrent findings recorded by the trial court, appellate court and revisional court?
12. Writ court has neither discussed the ratio of Full Bench judgment of this court delivered in case titled Jagtu versus Badri and others reported in 1979 SLJ Page 6, nor of the Single Bench judgment of this court delivered in case titled Mumma Malla versus Mohamad Padroo reported in 1983 SLJ Vol. V Page 298.
13. In the given circumstances, we are of the view that the impugned judgment merits to be set-aside and writ petition merits to be remanded back with the request to writ court to decide the writ petition afresh.
14. Viewed thus, this appeal is allowed, impugned judgment is set-aside. The writ petition shall come up before the writ court on 7.3.2011. Appellant is at

liberty to file additional pleadings and respondents-legal heirs of Karnail Singh are at liberty to file rejoinder, if so advised. Writ court is requested to decide the writ petition preferably within a period of two months.

15. Parties shall cause their appearance before the writ court on 7.3.2011.

JAMMU
22. 2. 2011
Amjad Lone PS