S. VENKATAPPA

v.

NARAYANAPPA AND ORS.

APRIL 25, 2001

[SYED SHAH MOHAMMED QUADRI AND S.N. VARIAVA, JJ.]

Tenancy and Land Laws :

Karnataka Land Reforms Act, 1961—Sections 44, 45, 2(11), 2 (12)—Occupancy Rights—Claim for—Tribunal granting on the basis of revenue records, rent receipts and oral evidence—Confirmed by appellate authority—Set aside by High Court—On the basis of sale agreement mentioning that vacant possession given to purchaser and the agreement attested by the grandson of the original owner—On appeal, held the High Court should not have interfered with the concurrent findings.

Constitution of India, 1950—Article 226—Writ Jurisdiction—Concurrent findings of facts—presumption as to correctness of Revenue record raised—High Court on basis of averments in the sale agreement disbelieved the revenue records—Held, not justified—Evidence Act, 1872, Section 114.

Section 2 (12)—Family—Grandson is not a member of the family within the meaning of terms in section 2(12)—Hence he could be a tenant.

The land in question was sold to 'X' who later sold it to respondents 1 and 2. Appellant signed the two sale deeds as attestor. Thereafter, appellant claimed occupancy rights to the land in question under sections 44 and 45 of the Karnataka Land Reforms Act, 1961. He produced oral and documentary evidence including revenue records showing his presence on land as tenant till the year 1975. Tribunal granted occupancy rights to the appellant. Appellate authority upheld the order. But High Court set aside the findings on the ground that the sale agreement by owner of the land mentioned that vacant possession had been given to the purchaser and the appellant who attested the agreement was the grandson of the original owner and therefore he could not be a tenant. Hence this appeal.

Disposing of the appeal, the Court

HELD : 1. The appellant produced oral and documentary evidence

A **including revenue records showing his presence on the land in question as tenant till the year, 1975. There was also concurrent finding by the authorities that he was tenant on the appointed day. Thus, the appellant has the right to be registered as occupant in respect of the land transferred to the State Government under Section 44 and 45 of the Karnataka Land Reforms Act, 1961. [201-B]**

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2.1. Sale agreements between private parties may contain any averments. Those averments have no presumptive value. The facts stated have to be proved. [201-F]

C **2.2. In the instant case High Court upset the concurrent findings of fact, only on the basis that the sale agreements by owner of the land mentioned that vacant possession had been given to the purchasers and that the appellant had attested both the sale agreements. The court also relied on the statement, without further proof, in both the sale agreements that appellant was the grandson of original owner and therefore he could not be tenant. It disbelieved** D **the revenue records even though they raised a presumption that what was stated was correct. [201-D-F]**

3. The appellant was not a member of the family of the owner of the land within the meaning of the term in section 2(12) of the Karnataka Land Reforms Act, 1961. Thus, it cannot be presumed that appellant could not be E **a tenant as he was the grandson of the owner of the land. [202-A]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2953 of 1997.

From the Judgment and Order dated 7.8.96 of the Karnataka High Court F in L.R.R.P. No. 2035 of 1990.

Shantha Kumar, V. Mahale and K.K. Gupta for the Appellant.

Ms. Kiran Suri and Sanjay R. Hegde for the Respondents.

G The Judgment of the Court was delivered by

S. N. VARIAVA, J. This Appeal is against an Order dated 7th August, 1996. Briefly stated the facts are as follows:

Prior to 1971 one Smt. Muniyamma was the owner of the concerned H land. She sold the said land to one Shri G. M. Munivenkate Gowda in 1971.

The Appellant signed the Sale Deed as an Attestor. A

On 1st March, 1974 the Karnataka Land Reforms Act of 1961 was amended. Original Sections 44 and 45 were substituted. Section 44 and the relevant portions of the substituted Section 45 read as follows:

> *"44. Vesting of land in the State Government.-* (1) All lands held by B or in the possession of tenants (including tenants against whom a decree or order for eviction or a certificate for resumption is made or issued) immediately prior to the date of commencement of the Amendment Act, other than lands held by them under leases permitted under Section 5, shall, with effect on and from the said date, stand transferred to and vest in the State Government. C
>
> (2) Notwithstanding anything in any decree or order of or certificate issued by any court or authority directing or specifying the lands which may be resumed or in any contract, grant or other instrument or in any other law for the time being in force, with effect on and from the date of vesting and save as otherwise expressly provided in the D Act, the following consequences shall ensue, namely:-
>
> (a) all rights, title and interest vesting in the owners of such lands and other persons interested in such lands shall cease and be vested absolutely in the State Government free from all encumbrances; E
>
> (b) [x x x x x] amounts in respect of such lands which become due on or after the date of vesting shall be payable to the State Government and not to the land owner, landlord, or any other person and any payment made in contravention of this clause shall not be valid; F
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> (c) all arrears of land revenue, cesses, water rate or other dues remaining lawfully due on the date of vesting in respect of such lands shall after such date continue to be recoverable from the land-owner, landlord or other person by whom they were payable and may, without prejudice to any other mode of recovery, be G realised by the deduction of the amount of such arrears from the amount payable to any person under this Chapter;
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> (d) no such lands shall be liable to attachment in execution of any decree or other process of any court and any attachment existing on the date of vesting and any order for attachment passed H

A before such date in respect of such lands shall cease to be in force;

(e) the State Government may, after removing any obstruction which may be offered, forthwith take possession of such lands:

B Provided that the State Government shall not dispossess any person of any land in respect of which it considers, after such enquiry as may be prescribed, that he is *prima facie* entitled to be registered as an occupant under this Chapter.

(f) the land-owner, landlord and every person interested in the land C whose rights have vested in the State Government under clause (a), shall be entitled only to receive the amount from the State Government as provided in this Chapter;

(g) permanent tenants, protected tenants and other tenants holding such lands shall, as against the State Government, be entitled D only to such rights or privileges and shall be subject to such conditions as are provided by or under this Act; and any other rights and privileges which may have accrued to them in such lands before the date of vesting against the landlord or other person shall cease and determine and shall not be enforceable E against the State Government.

45. *Tenants to be registered as occupants of land on certain conditions.*- (I) Subject to the provisions of the succeeding sections of this Chapter, every person who was a permanent tenant, protected tenant or other tenant or where a tenant has lawfully sub-let, such F sub-tenant shall with effect on and from the date of vesting be entitled to be registered as an occupant in respect of the lands of which he was a permanent tenant, protected tenant or other tenant or sub-tenant before the date of vesting and which he has been cultivating personally.

G (2) xxx xxx xxx

(3) xxx xxx xxx"

On 7th January, 1976 Sri Munivenkate Gowda sold the land to Respondents 1 and 2. This Sale Deed is also signed by the Appellant as an H Attestor.

On 29th August, 1976 the Appellant made an Application in Form No. 7 claiming occupancy rights under the provisions of amended Sections 44 and 45. The Respondents filed their objections. On 10th December, 1981 the Land Tribunal rejected the application of the Appellant. The Appellant then filed a Writ Petition in the High Court. By an Order dated 11th March, 1983 the High Court set aside the Order of the Land Tribunal and remitted the matter back for fresh enquiry. A B

On remand the Land Tribunal took additional oral and documentary evidence and, by an Order dated 27th March, 1987, held that the Appellant was the tenant of the land on the appointed day i.e. 1st March, 1974 and prior to that. The Land Tribunal thus granted occupancy rights to the Appellant. C

Respondents 1 and 2 filed an Appeal before the Land Reforms Appellate Authority, Kolar. The Appellate Authority also took further evidence and documents on record and held that the Appellant was a tenant of the land on the appointed day, i.e. 1st March, 1974 and prior to that and confirmed the Order granted occupancy rights to the Appellant. The Appellate Authority thus dismissed the Appeal on 4th April, 1990. D

Respondents 1 and 2 then filed a Writ Petition in the High Court which has been allowed by the High Court by the impugned Order dated 7th August, 1996.

Before the question involved is taken up for consideration certain other provisions of the Karnataka Land Reforms Act need to be noted. Section 2(34) defines a tenant as follows: E

> "2(34). "Tenant" means an agriculturist [who cultivates personally the land he holds on lease] from a landlord and includes- F
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> (i) a person who is deemed to be a tenant under Section 4;
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> (ii) a person who was protected from eviction from any land by the Karnataka Tenants (Temporary Protection from Eviction) Act, 1961;
>
> (ii-a) a person who cultivates personally any land on lease under a lease created contrary to the provisions of Section 5 and before the date of commencement of the Amendment Act; G
>
> (iii) a person who is a permanent tenant; and
>
> (iv) a person who is a protected tenant." H

A Section 4 provides that a person lawfully cultivating any land belonging to another person shall be deemed to be a deemed tenant, provided (a) the land is not cultivated personally by the owner (b) if such person was not a member of the owner's family, or (c) a servant or a hired labourer or wages.

Sections 2(11) and 2(12) are also relevant. They read as follows:

B

"2(11) "To cultivate personally" means to cultivate land on one's own account-

(i) by one's own labour; or

(ii) by the labour of any member of one's family or;

C

(iii) by hired labour or by servants on wages payable in cash or kind, but not in crop share, under the personal supervision of oneself or by member of one's family;

2(12) "Family" means,

D

(a) in the case of an individual who has a spouse or spouses, such individual, the spouse or spouses and their minor sons and unmarried daughters, if any;

(b) in the case of an individual who has no spouse, such individual and his or her minor sons and unmarried daughters;

E

(c) in the case of an individual who is a divorced person and who has not remarried, such individual and his minor sons and unmarried daughters, whether in his custody or not; and

(d) where an individual and his or her spouse are both dead, their minor sons and unmarried daughters;"

F

In support of his claim Appellant had relied upon R.T.C. record of rights and tenancy and Pahani for the concerned area. This showed that from 1965 to 1970 the Appellant was cultivating the land as "Wara" i.e. a tenant. This record also showed Muniyamma as self cultivator for the years 1970-71. It could not be disputed that no enquiry, as contemplated under the Act, had taken place before such a change was made in the records. The record again shows in 1973-74 and 1974-75 the name of the Appellant but as a "Swantha", i.e. a cultivator. Apart from these the Appellant gave oral evidence of his own tenancy firstly under one Sri Narayanappa, who was the owner before Muniyamma, then under Muniyamma and thereafter under Munivenkate Gowda.

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H Munivenkate Gowda also gave evidence. He confirmed that the Appellant

was a tenant under him and had been paying him rent by giving a share in the crop. The Appellant and Munivenkate Gowda proved certain rent receipts for the period 1972 to 1975. Munivenkate Gowda accepted the fact that he had received the rent and that he had issued those rent receipts. Thus the Revenue Records showed that the Appellant as a tenant from 1965 to 1970. Thereafter, the Revenue Records showed during the years 1972 to 1974 the name of the Appellant as a self cultivator. Admitted that entry would be wrong because during this period Munivenkate Gowda was the owner of the land. The entries show the presence of the Appellant on the land as a tenant upto 1970. The evidence of Munivenkate Gowda establishes that the Appellant was a tenant till 1975.

On the above evidence, oral and documentary both the Land Tribunal as well as the Appellate Authority had, on the material before them, held that the Appellant was a tenant of the land on the appointed day i.e. 1st March, 1974.

The High Court, however, upset the concurrent findings of fact, in its revisional jurisdiction, only on the basis that the Sale Agreements of 1971 i.e. from Muniyamma to Munivenkate Gowda and in the Sale Agreement of 1976 i.e. from Munivenkate Gowda to Respondents 1 and 2, it was mentioned that vacant possession had been given to the purchasers and that the Appellant had attested both the Agreements. The High Court also relied, without further proof, on the statement in both the Sale Agreements that Appellant was the grandson of Muniyamma. Only on the basis of the averments in the Sale Deeds the High Court disbelieved the Revenue Records, even though they raised a presumption that what was stated thereon was correct. The High Court disbelieved the oral testimony and the Revenue Records only on basis of statements in the sale Agreements. In our view the reasoning of the High Court cannot be sustained at all. Sale Agreements between private parties may contain any averments. Those averments have no presumptive value. The facts stated therein have to be proved. Respondents 1 and 2 had tendered no further or other evidence of the relevant period. They tendered no evidence which rebutted the presumption which arose from the Revenue Records. The testimony of the Appellant and Munivenkate Gowda was believed by the Trial Court which had the advantage of seeing the demeanor of the witnesses. Their testimony was supported by Revenue Records and rent receipts. The first Appellate Court had also accepted that evidence. Without any justification, the High Court chose to disbelieve that evidence. From the statements in the two Agreements the High Court presumed that Appellant could not be a

A tenant as he was grandson of Muniyamma. This was entirely erroneous. Even if Appellant was a grandson, he could still be a tenant as he is not a member of the family of Muniyamma within the meaning of the term in Section 2(12). Also cultivation by Appellant would not amount to Muniyamma having cultivated personally within the definition under Section 2(11). The two Agreements do not mention that there is no tenant on the land.

B

In our view, the impugned Judgment cannot be sustained and is accordingly set aside. The Orders of the Land Tribunal and the first Appellate Court are restored. The Appeal stands disposed of accordingly. There will be no Order as to costs.

C

N.J. Appeal disposed of.