HONNAMMA & ORS. A

v.

NANJUNDAIAH SINCE DEAD BY HIS LRS. & ORS.

(Civil Appeal Nos. 5312-5318 of 2001)

MARCH 31, 2008 B

[TARUN CHATTERJEE & HARJIT SINGH BEDI, JJ.]

Karnataka Land Reforms Act, 1961:

Form-7 – Tenant claiming right of occupancy – Application in Form-7 Amendment in Form-7 to rectify misdescription of land – Claim denied by Land Tribunal – Appellate authority allowing the claim except in respect of one survey number holding that the same needed verification – High court rejected claimant's case – On appeal, held: Claimant was entitled to occupancy rights – He was a deemed tenant – The condition precedent for creation of deemed tenancy is lawful possession and not payment of rent – Amendment in Form-7 cannot be refused on the ground of limitation if the amendment is for rectification of mis-description of the land – Land Laws and Agricultural Tenancy. C D E

s. 121-A – Revision – Scope of – Held: Interference in revision is justified only on very limited grounds viz. perversity.

Predecessor-in-interest of the appellants-claimants filed an application before Land tribunal in Form No-7 of Karnataka Land Reforms Act, 1961, claiming occupancy rights on specified survey numbers in village 'A'. Thereafter, he filed an application on 8.4.1981 seeking amendment of Form-7. The amendment was allowed and thereby some land falling in villages 'M' and 'H' were included in Form-7. The owners of the land, contested the claim. The Land Tribunal rejected the claim. Land Reforms Appellate Authority allowed the appeal holding that the claimant was the tenant of the land. Appellate Authority also approved the amendment to Form 7 on the ground F G

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A that the amendment was carried out within limitation. However the occupancy rights in respect of one survey number of village 'M' was denied holding that inclusion of the survey number needed proper verification. High Court had earlier dismissed two Revision Petitions B against the order of the appellate authority. Revision petitions filed by the respondents was allowed by High Court, holding that the occupancy rights for the lands added by amendment was not permissible. The amendment application was barred by limitation; and that C the claimant could not be considered as deemed tenant as he was not a contractual tenant and was not paying rent. Hence the present appeals.

Allowing the appeals, the Court

D HELD: 1. A mere mis-description while identifying the land in Form no. 7 as originally filed would not be hit by the embargo with respect to the last date of the filing of Form no.7 i.e. on 30th June, 1979. A party cannot be refused amendment in a case of a mis-description of property as the purpose of amendment is to ensure that E the real issues are addressed and that in such a case no question of limitation would arise and the amended plaint must be deemed to have been instituted on the date on which the original plaint had been filed. Therefore, the finding of the High Court on the question of limitation is F erroneous. [Para 8] [847-D-G]

Jai Jai Ram Manohar Lal vs. National Building Material Supply, Gurgaon AIR 1969 SC 1267 – relied on.

Pakeera Moolya vs. Mari Bhat ILR 1999 Kar. p. 809 – G distinguished.

2. A comparative reading of Sections 121 and 121-A of Karnataka Land Reforms Act, 1961 would show that the High Court's power has been circumscribed to satisfying itself as to the legality of the order impugned H

and to the regularity of the proceedings. Interference in revision on facts would be justified only on very limited grounds such as perversity and that if the view taken by the Appellate Authority was possible on the evidence, it would be inappropriate on the part of the High Court to differ in its conclusions. [Para 11] [848-H; 849-A-B]

3. High Court was deeply impressed by the fact that the claimant had not been paying rent at the time when the application in Form No. 7 had been filed. All that is required for the person to claim the status of a deemed tenant is that the possession must be lawful, but there is nothing which would necessitate the payment of rent as a condition precedent for the creation of a deemed tenancy. The finding of the High Court with respect to the deemed tenancy is also erroneous. [Paras 11 and 12] [849-C-D; 850-F-G]

Dahya Lala and Ors. vs. Rasul Mahomed Abdul Rahim and Ors. **AIR 1964 SC 1320 – followed.**

Chokkannagiri Narayanappa vs. Land Tribunal **1982 (2) Kar. L.J. 21 – disapproved.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5312-5318 of 2001

From the final Judgment and Order dated 27.07.2000 of the High Court of Karnataka at Bangalore in Land Reforms Revision Petition Nos. 4381-4383 of 1988, 4659, 5387, 5031 & 3553 of 1988.

S.N. Bhat, N. P.S. Panwar and D.P. Chaturvedi for the Appellants.

P.R. Ramasesh, Sanjay R. Hegde, Amit Kr. Chawla, Arul Varma and Vikrant Yadav for the Respondents.

The Judgment of the Court was delivered by

HARJIT SINGH BEDI, J. 1. These appeals by special leave are directed against the judgment of the Karnataka High

A Court dated 27th July, 2000 whereby the orders of the Appellate Tribunal conferring occupancy rights on the appellants, have been reversed. The tenant-claimants are before us in these appeals.

2. The facts of the case are as under:-

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3. One Nanjundegowda since deceased filed an application on 2nd January. 1976 before the Land Tribunal, Nagamangala in Form No.7 of the Karnataka Land Reforms Act, 1961 (hereinafter called the "Act") claiming occupancy rights on specified surveys numbers in Village Anakanahalli. He C thereafter filed an application on 8th April, 1981 seeking to amend Form No. 7 on the plea that some of the survey numbers given therein had not been correctly re-produced. This application was straightaway allowed by the Land Tribunal without notice to the opposite party and the necessary changes D in Form No. 7 including some land falling in the Revenue Estates of Villages Mylanahalli and Honnenahalli were made. The landowner, K. Balalingaiah (now represented by his legal representatives) was the owner of the land in question. One Javarappa had also filed an application in Form 7 in the year E 1975 for the same piece of land for which Nanjundegowda had filed his application in the year 1981. Javarappa's application was dismissed by the Land Tribunal. He thereafter filed a Writ Petition in the High Court which too was dismissed on 4th December, 1980. After the rejection of the aforesaid application F Balalingiah sold the land in dispute to the respondents herein. The purchasers were impleaded as parties before the Land Tribunal and they contested the claim of Nanjundegowda on various grounds. The tribunal, after taking evidence, documentary as well as oral, concluded that the claim of tenancy rights made by Nanjundegowda was untenable and accordingly G rejected the claim. This order was challenged by Nanjundegowda by way of a writ petition but on the constitution of the Land Reforms Appellate Authority by an amendment of the Act, the writ petition was remitted to the Appellate Authority for disposal. The Appellate Authority crystallized the points for H consideration as under:

1. Whether the lands in dispute are agricultural lands A

2. Whether the action of the Land Tribunal permitting amendment of form No. 7 on 8.4.1981 by including the lands in Milanahalli and Honnenahalli was valid

3. Whether the inclusion of Survey No. 12 of Milanahalli B village in form no. 7 by the amendment application dated 8.4.1981 was valid

4. Whether the lands in question were tenanted or not on 1.3.1974

C

5. Whether the appellant was in occupation as a tenant of the lands in question as on 1.3.1974

6. Whether the order of the Land Tribunal was correct and whether it was liable to be interfered with

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and after an elaborate discussion of the evidence, allowed the appeal with respect to the land except that covered by survey Nos.64 and 12 of villages Anakanahalli and Mylanahalli respectively vide order of 3rd June 1988 observing that the land was agricultural in nature that Nanjundegowda was indeed a tenant on the land mentioned in Form No. 7 as his uncle Kallumaligegowda had brought him from Kenchanahalli to Anakanahalli where the land was situated and built a house for him with a promise to give the lands to him, and that after the death of Kallumaligegowda, his relatives had assured Nanjundegowda that he could work on the land and bring credit to his uncle's family. The Authority also held that the amendment application pertaining to Form No. 7 filed on 8th April, 1981 could not be said to be beyond limitation. K. Balalingaiah filed a revision petition against the order of the Tribunal before the High Court of Karnataka (CRP No. 3582 of 1988). One Smt. Lakshmamma, a respondent herein, also filed a revision petition against the order of the Tribunal before the High Court of Karnataka (CRP No. 3553 of 1988). The High Court dismissed the revision petitions for non prosecution by its order dated 20th September, 1991 and an application for re-call of the order too

E F G H

A was dismissed. One Ramegowda, also filed a revision petition before the High Court against the order of the tribunal (L.L.R.P No 1 of1997) which too was dismissed by order dated 29th January, 1997. Some of the alleged purchasers (respondents herein) again filed revision petitions before the High Court
B challenging the order of the Appellate Authority. The High Court observed that the three points which arose for consideration were:

(1) Whether the Land Reforms Appellate Authority was right in concluding that the amendment application dated
C 8.4.1981 was rightly allowed except to the extent indicated in the appellate order

(2) Whether the dismissal of CRP No. 3582 and CRP No. 3553 of 1988 for non-prosecution and the dismissal of
D LRRP 1 of 1997 by challenging the impugned order constitutes res-judicata as against the petitioners herein

(3) Whether the order of the Land Reforms Appellate Authority can be legally sustained

and then went to examine each of the issues independently.
E The court concluded that the amendment application dated 8th April, 1981 having been filed after the cut off date of 30th June, 1979 was not maintainable in the light of the Division Bench judgment of the High Court in **Pakeera Moolya vs. Mari Bhat (ILR 1999 Kar. p. 809),** as a very limited right for an amendment
F had been left with the claimant and that did not cover the inclusion of land not identified in the original application and as such the amendment insofar as it dealt with the land in Village Honnenahalli and partly in Village Anakanahalli could not be claimed by amendment.

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On Point No.2, the High Court opined that the earlier decisions in CRP No. 3582 and CRP 3553 of 1988 and in LRRP No. 1 of 1997 did not constitute res-judicata with respect to the present proceedings.

H 4. On the third issue, the High Court found that the evidence

produced by the parties did not justify the conclusion that the claimant was a person who had been lawfully inducted on the land in question so as to give him the status of a deemed tenant as he was not a contractual tenant and was not paying rent and for this purpose relied on several judgments of this Court and of the High Court and in particular on **Chokkannagiri Narayanappa vs. Land Tribunal (1982 (2) Kar. L.J. p.21).** The High Court accordingly allowed the revision petition and set aside the order of the Appellate Authority, thus dismissing the application filed by Nanjundegowda. It is in this circumstance, that the present appeals are before us by way of special leave.

5. At the very outset, Mr. S.N. Bhat, the learned counsel for the appellant has fairly conceded before us that the earlier proceedings did not constitute res-judicata and the conclusion drawn by the High Court to that extent was correct. He has however argued that the finding on the other two points i.e. limitation and the deemed tenancy of Nanjundegowda had been wrongly decided by the High Court and these findings were required to be set aside. He has laid special emphasis on the submission that the deemed tenancy under Section 4 of the Act did not visualize the payment of any rent and all that was required for the claimant to assume the status of a deemed tenant was that he had been cultivating the land lawfully. In support of this argument, the learned counsel has cited **Dahya Lala and others vs. Rasul Mahomed Abdul Rahim and others AIR 1964 SC 1320**.

6. The learned counsel for the respondent has however pleaded that by the amendment application dated 8th April, 1981 the applicant had sought to include land which did not figure in the first application dated 2nd January, 1976 and as an embargo had been placed by the Act itself under which no application in Form No. 7 could be entertained after 30th June,1979, the question of any amendment thereafter was statutorily barred and that the High Court even otherwise having found no case in favour of the claimants on facts, no interference was called for.

A 7. We have considered the arguments advanced by learned counsel. It is true that the Act itself provides a cut off date in the filing of the application in Form No. 7. It is also true that the original application had been filed well within time though the amended application had been filed after the last date B permitted by the statute. In order to examine the nature of the amendment, and whether in fact it had set up what was a new case, requires an examination of the application. It may be mentioned that in the original application the claim was limited to land in Village Anakanahalli which was identified as under:

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Village	Survey No.	Extent
Anakanahalli	35	00-27
	49-1	0-37
	50	1-17
D	52/3	1-32
	71/1	1-23
	31	0-20
	64	0-13
E	81	7-37
	75	4-07
	75	6-33
	13	6-02

F By the amended application dated 8th April, 1981, however the following amendment was sought:

Village	Survey No.	Extent
Anakanahalli	35-1	00-02
G	35-2	0-27
	49-1	0-37
	50-3	1-17
	52-3	1-32
H	71-1	1-23

	31-2a	0-15
Mylanahalli	12	1-33
	13	6-05
Honnenahalli	75-1	7-00
	75-2c	0-18
	81c	5-04

8. A perusal of the first and the amended application would reveal that as survey nos. 64, 81, 75, 75, 13 did not figure in the original application, the proposed amendment was rejected and that order has been maintained even by the High Court. The claim pertaining to survey No. 12 in village Mylanahalli too has also been rejected for the same reasons. The amendments have however been allowed with respect to the other survey numbers and also with respect to a change in the name of the village(s) on the understanding that a mere mis-description of the property was to be rectified by amendment. To our mind therefore, a mere mis-description while identifying the land in Form no. 7 as originally filed would not be hit by the embargo with respect to the last date of the filing of Form no.7 i.e. on 30th June, 1979. The judgment referred to by the High Court is based on a different set of facts in as much certain items which had not been included in the original plaint were sought to be included by amendment, a proposal which the court held could not be justified. The observations in **Jai Jai Ram Manohar Lal vs. National Building Material Supply, Gurgaon AIR 1969 SC 1267** are meaningful. It has been observed that a party cannot be refused amendment in a case of a mis-description of property as the purpose of amendment is to ensure that the real issues are addressed and that in such a case no question of limitation would arise and the amended plaint must be deemed to have been instituted on the date on which the original plaint had been filed. We are, therefore, of the opinion that the finding of the High Court on the question of limitation is erroneous.

9. Mr. Bhat has also laid great emphasis on the third issue as to whether the deemed tenancy which Nanjundegowda had

A claimed was justified on facts. He has pointed out that the appellate authority as the final fact finding body had found in favour of the deemed tenants on an appreciation of the evidence that had been adduced and it was not open to the High Court sitting in revision to upset these findings of fact unless they were B perverse or not possible on the evidence. It has also been emphasized that the High Court had relied on **Chokkannagiri Narayanappa's case (supra)** and observed that as no rent had been paid by Nanjundegowda it could not be said that he could attain the status of a deemed tenant. He has however C placed reliance on **Dahya Lala's case** (supra) wherein a Constitution Bench of this court while construing Section 4 of the Bombay Tenancy and Agricultural Lands Act, 1948 (which is para materia with Section 4 of the Act) had clearly held that the payment of rent was not visualized in such a situation.

D 10. We have considered the arguments advanced by learned counsel. Section 121 provides for an appeal to the Appellate Tribunal and gives it jurisdiction to confirm, modify or rescind the order in appeal or its execution or to pass such other order as may seem legal and just in accordance with the E provisions of the Act. Section 121A which confers the revisional power on the High Court reads as under:

> "**121-A Revision by the High Court.** - The High Court may at any time call for the records of any order or proceeding recorded by the Appellate Authority under this F Act or any other law for the purpose of satisfying itself as to the legality of such order or as to the regularity of such proceeding and may pass such order with respect thereto as it thinks fit;
>
> G Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard".

11. A comparative reading of Sections 121 and 121-A would show that the High Court's power has been circumscribed H to satisfying itself as to the legality of the order impugned and to

the regularity of the proceedings. Mr. Bhat appears to be right in submitting that interference in revision on facts would be justified only on very limited grounds such as perversity and that if the view taken by the Appellate Authority was possible on the evidence it would be inappropriate on the part of the High Court to differ in its conclusions. It bears notice that the Appellate Authority had placed reliance on a large number of documents/ letters, the landowners had written to Nanjundegowda. The Tribunal accordingly found that these letters, when examined in the light of the other evidence, had discharged the presumption under Section 133 of the Act with regard to the correctness of the revenue record which was admittedly in favour of the landowner. It appears also that the High Court was deeply impressed by the fact that Nanjundegowda had not been paying rent at the time when the application in Form No. 7 had been filed. This finding is on the face of it erroneous in the light of the Judgment in **Dahya Lala's case (Supra)** . As already noted above, while construing Section 4 of the Bombay Tenancy and Agricultural Lands Act, which is pari materia with Section 4 of the Act, this Court observed as under:

> "The Act of 1948, it is undisputed, seeks to encompass within its beneficent provisions not only tenants who held land for purpose of cultivation under contracts from the owners but persons who are deemed to be tenants also. The point in controversy is whether a person claiming the status of a deemed tenant must have been cultivating land with the consent or under the authority of the owner. Counsel for the appellants submits that tenancy postulates a relation based on contract between the owner of land, and the person in occupation of the land, and there can be no tenancy without the consent or authority of the owner to the occupation of that land. But the Act has by Section 2(18) devised a special definition of tenant and included therein persons who are not contractual tenants. It would therefore be difficult to assume in construing Section 4 that the person who claims the status of a deemed tenant must be cultivating land with the consent or authority of the owner.

A The relevant condition imposed by the statute is only that the person claiming the status of a deemed tenant must be cultivating land "lawfully": It is not the condition that he must cultivate land with the consent of or under authority derived directly from the owner. To import such a condition B is to rewrite the section, and destroy its practical utility. A person who derives his right to cultivate land from the owners would normally be a contractual tenant and he will obviously not be a "deemed tenant". Persons such as licencees from the owner may certainly be regarded as falling within the class of persons lawfully cultivating land C belonging to others, but it cannot be assumed therefrom that they are the only persons who are covered by the section. The Act affords protection to all persons who hold agricultural lands as contractual tenants and subject to the exceptions specified all persons lawfully cultivating lands D belonging to others, and it would be unduly restricting the intention of the legislature to limit the benefit of its provisions to persons who derive their authority from the owner, either under a contract of tenancy, or otherwise. In our view, all persons other than those mentioned in clauses E (*a*), (*b*) and (*c*) of Section 4 who lawfully cultivate land belonging to other persons whether or not their authority is derived directly from the owner of the land must be deemed tenants of the lands".

12. From a perusal of the aforequoted passage all that is F required for the person to claim the status of a deemed tenant is that the possession must be lawful, but there is nothing which would necessitate the payment of rent as a condition precedent for the creation of a deemed tenancy. We are therefore of the opinion that the finding of the High Court with respect to the G deemed tenancy under Issue No.3 is also erroneous.

13. This appeal is accordingly allowed, the order of the High Court is set aside and that of the Appellate Authority restored. There will, however, be no order as to costs.

H K.K.T. Appeals allowed.