A ISHWARAGOUDA & ORS.

v.

MALLIKARJUN GOWDA & ORS.

(Civil Appeal No. 5878 of 2002)

NOVEMBER 7, 2008

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[TARUN CHATTERJEE AND AFTAB ALAM, JJ.]

Karnataka Land Reforms Act, 1961:

C *s. 133 – Jurisdiction to decide as to whether a land is agricultural land and the person claiming its possession is a tenant – HELD: Vests only on Land Tribunal and no suit or proceedings in such matter shall be entertained by any civil court – Further, once such a question has been decided* D *by the Tribunal, the decision cannot be challenged before any civil court and if any order in the matter is passed by a civil court setting aside the decision of the Land Tribunal, the same would be a nullity – In the instant case, the first appellate court rightly held that the Land Tribunal having decided that both the parties were entitled to occupancy rights* E *with regard to land in dispute, civil court had no jurisdiction to decide whether joint family or one of its members was the tenant – High Court in second appeal erred in setting aside the judgment of first appellate court – Judgment of High Court set aside.*

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The suit land was under cultivation of the predecessor-in-title of the parties. After coming into operation of the Karnataka Land Reforms Act, 1961 the father of the respondents filed Form No. 7 for grant of G **occupancy rights in respect of the entire land whereas father of the appellants filed Form No. 7 claiming that the land was being cultivated jointly by both the families. The Land Tribunal held that since the land was being cultivated jointly, both the applicants were entitled to**

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occupancy rights. The High Court dismissed the writ petition of the respondents, and remitted the matter to the Land Tribunal for demarcation. The appeal filed by the respondents was also dismissed. Against the order of demarcation passed by the Land Tribunal, the respondents, having remained unsuccessful in the appeal before Land Reforms Appellate Tribunal as also in the revision petition before the High Court, filed a suit for declaration of title in respect of the suit land. The suit was decreed by the trial court. But the first appellate court dismissed the suit holding that the civil court had no jurisdiction in the matter. The High Court having allowed the second appeal filed by the respondents and directed the first appellate court to decide the appeal filed by the appellants, the latter filed the appeal.

Allowing the appeal, the Court

HELD:1.1. A plain reading of s.133 of the Karnataka Land Reforms Act, 1961 would make it clear that jurisdiction to decide the question whether a particular land is an agricultural land, and whether the person claiming possession thereof is a tenant shall vest only on the Land Tribunal and no suit or proceeding etc. shall be entertained by any civil court. It would be further evident that even when a suit is pending on the said question, the civil court shall refer such dispute to be decided by the Tribunal for decision. Once the Land Tribunal decides the question, the civil court cannot have any jurisdiction in the matter in view of s.133 of the Act. [Para 6] [845-A-C]

1.2. Furthermore, once a land tribunal decides the question enumerated in s.133 of the Act, such decision of the Land Tribunal also cannot come under challenge before any civil court and if any order is passed by the civil court setting aside the decision of the Land Tribunal, such an order would be a nullity. If any consequential

A order is also passed by the civil court, setting aside the decision of the Land Tribunal and directing the possession of land in dispute to be delivered, it must be held that the said order was without jurisdiction and therefore a nullity. [Para 6] [845-D-E]

B *Mudakappa vs. Rudrappa & Ors.* (1994) 2 SCC 57, relied on.

Balawwa & Anr. vs. Hasanabi & Ors. (2000) 9 SCC 272, distinguished.

C 1.3. In the instant case, before the Land Tribunal it was conclusively decided that the predecessor-in-title of both the parties had taken the land in dispute for cultivation jointly and that they had been jointly cultivating the same. That being the position, and in view D of Section 133 of the Act, the jurisdiction of the civil court having been ousted, the High Court was in error in setting aside the judgment of the first appellate court and remanding the matter to it for decision in the light of the observations made in the impugned judgment. [Para 10] E [848-F-G, H; 849-A]

1.4. The High Court in the earlier writ petition, by its order dated 17th of December, 1982, had held on consideration of evidence produced by the parties and F materials on record that the land in dispute was taken for cultivation jointly by the parties and, therefore, the parties were in joint cultivation. It would be evident from the said order of the High Court that only to demarcate the share of the parties, the matter was remitted back to the Land G Tribunal. Therefore, the question of reopening the issue, namely, whether any one is in possession of the land as a personal cultivator, or it was in joint possession of the family members of the parties, is no longer available to be agitated before the civil court. [Para 10] [848-C-E]

H 1.5. The judgment of the High Court is set aside and

that of the first appellate court holding that the civil court had no jurisdiction to entertain the suit for declaration of title as it was within the exclusive jurisdiction of the Land Tribunal is restored. [Para 11] [849-B]

Case Law Reference:

(2000) 9 SCC 272	**distinguished**	**para 4**
(1994) 2 SCC 57	**relied on**	**para 8**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5878 of 2002.

From the final Judgment and Order dated 20.8.2001 of the High Court of Karnataka at Bangalore in RSA. No. 100 of 1998.

Kiran Suri and Aparna Bhat for the Appellants.

S.K. Kulkarni, M. Gireesh Kumar and Khwairakpam Nobin Singh for the Respondents.

The Judgment of the Court was delivered by

TARUN CHATTERJEE, J. 1. This appeal is directed against the judgment and order dated 28th of August, 2001 of the High Court of Karnataka at Bangalore in a Second Appeal whereby, the High Court had allowed the appeal filed by the respondents against the judgment and decree of the 2nd Additional District Judge, Dharwad, remanding back the matter to the First Appellate Court to decide in accordance with law in view of the findings made by the High Court in the second appeal.

2. The relevant facts, as arising from the case made out by the appellants, which would assist us in appreciating the controversy involved are narrated in a nutshell, which are as follows:

3. The disputed land bearing RS No. 40 measuring 18

A acres 32 guntas was an agricultural land belonging to one Laxmibai, situated in Harlapur village in Gadag taluka. After the death of Smt. Laxmibai, her grand sons inherited the said land and it was under cultivation of the predecessor in title of the appellants and the respondents. After coming into operation of
B the Karnataka Land Reforms Act (in short "the Act"), Basanagowda, the father of the respondents filed Form No. 7 under the Act for grant of occupancy rights on the ground that they were in actual cultivation of the entire land. Parwategowda, the father of the appellants, simultaneously also filed an
C application under Form No. 7 claiming that the said land was being cultivated jointly by the family, i.e. the family of Basanagowda, the father of the respondents, and Parwategowda, the father of the appellants. Both the above-mentioned applications were registered on the file of Land
D Tribunal, Gadag. On 21st of November, 1976, the Land Tribunal passed orders holding that Basanagowda and Parwategowda were jointly cultivating the lands and were entitled to occupancy rights in the said land. Aggrieved by the said order of the Land Tribunal, the respondents filed a Writ Petition in the High Court
E of Karnataka being WP No. 2088 of 1977. The High Court dismissed the writ petition by its order dated 17th of December, 1982, inter alia, holding that the disputed land was taken on cultivation jointly by the family and that it was in joint cultivation. However, for demarcation of half portion of the disputed land,
F the matter was remitted to the Land Tribunal. The respondents thereafter filed an appeal before a Division Bench of the High Court, which was dismissed by an order dated 6th of June, 1983. Meanwhile, the Land Tribunal after being remanded back the matter for demarcation of the disputed land between the
G parties by the High Court, allotted southern half portion to Parwategowda and his family and the Northern half portion to Basanagowda and his family by its order dated 3rd of January, 1985. Against the said order, the respondents preferred an appeal before the Land Reforms Appellate Authority being L.R.
H Appeal No. 1687 of 1986 which was dismissed by the Appellate

Authority on 14th of September 1987. A

4. Against the said judgment and order, the respondents preferred a civil revision petition being CRP No. 5632 of 1987 before the High Court of Karnataka. The High Court dismissed the revision petition, inter alia, observing that the party B prejudiced can approach a civil court to claim exclusive possession of the disputed land. On the basis of such an observation, the respondents thereafter filed a suit for declaration of title and possession in respect of the disputed land being O.S No. 131 of 1989 in the Court of Civil Judge, C Gadag. The Civil Judge by its judgment decreed the suit holding that it had the jurisdiction to decide as to whether it was a joint family property or an individual property. Aggrieved by the said judgment and decree of the civil judge, the appellants herein filed an appeal before the 2nd Additional District Judge, D Dharwad. The Additional District Judge allowed the appeal holding that the civil court had no jurisdiction to entertain the suit for declaration of title and possession, which is within the exclusive jurisdiction of the Land Tribunal. The respondents filed a Second Appeal in the High Court against the aforesaid E judgment passed in the appeal. Relying on a decision of this Court, in *Balawwa & Anr. v. Hasanabi & Ors.* [(2000) 9 SCC 272], the High Court set aside the judgment of the appellate court and allowed the appeal remanding back the matter to the first appellate court directing it to decide the matter in F accordance with law in view of the observations made by the High Court.

Feeling aggrieved by the judgment of the Division Bench of the High Court, the appellants filed this special leave petition, which was heard by us on grant of leave in the presence of the G learned counsel for the parties.

5. The moot question that needs to be decided in this appeal is as follows:

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A "Whether the jurisdiction of the civil court is ousted in view of Section 133 of the Karnataka Land Reforms Act to decide whether an individual is a tenant or the joint family is the tenant of the disputed land the same being within the exclusive jurisdiction of the Land Tribunal?"

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6. We have heard the learned counsel appearing for the parties and perused the materials on record. It is pertinent to refer to Section 133 of the Act for a better understanding of the issue in hand. Section 133 in so far as it is relevant for the C present case states:

"133. Suits, proceedings etc. involving questions required to be decided by the Tribunal:-1) Notwithstanding anything in any law for the time being in force,-

D i) no civil or criminal court or officer or authority shall, in any suit, case or proceedings concerning a land decide the question whether such land is or is not agricultural land and whether the person claiming to be in possession is or is not a tenant of the said E land from prior to 1st March, 1974;

ii) such court or officer or authority shall stay such suit or proceedings in so far as such question is concerned and refer the same to the Tribunal for decision;

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iii) all interim order issued or made by such court, officer or authority, whether in the nature of temporary injunction or appointment of a Receiver or otherwise, concerning the land shall stand G dissolved or vacated, as the case may be;

iv) ....."

It is clear from a plain reading of the aforesaid provisions of the Act, that no Court or any authority has any jurisdiction to

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decide whether a person claiming to be in possession is or is not a tenant of the disputed land and the sole authority to decide such dispute vests only in the Land Tribunal. A plain reading of Section 133 of the Act would make it clear that any questions concerning a land whether such land is or is not an agricultural land, and whether the person claiming possession is or is not a tenant of the land shall vest only on the Land Tribunal and no suit or proceeding etc. shall be entertained by any civil or criminal court. It would be further evident that even when a suit is pending on the said question, the Court shall refer such dispute to be decided by the tribunal for decision. Once a land tribunal decides the aforesaid question, the Civil Court cannot have any jurisdiction to decide the said dispute in a civil proceeding in view of Section 133 of the Act. Furthermore, once a land tribunal decides the said question enumerated in section 133 of the Act, such decision of the Land Tribunal also cannot come under challenge before any civil court and if any order is passed by the civil court setting aside the decision of the Land Tribunal, such an order would be a nullity. If any consequential order is also passed by the civil court, setting aside the decision of the Land Tribunal and directing the possession of the disputed land to be delivered, it must be held that the said order was without jurisdiction and therefore a nullity. Therefore, we are of the view that the High Court fell in error by directing the order of remand to the first appellate court to decide the said issue after it was decided by the tribunal which was uncalled for and was therefore liable to be set aside.

7. A plain reading of the judgment of the High Court would clearly demonstrate that it had relied on the decision this Court in the case of *Balawwa & Anr. vs. Hasanabi & Ors.* (supra), in which this Court had held that inspite of the special jurisdiction under the Act, the jurisdiction of the civil court was not ousted after considering the reliefs claimed in the suit. In that decision this Court had noted that in the said suit the relief of partition was granted and it was that decree of partition, which was the

A subject matter of appeal in that case. In that context, this Court in paragraph no.7 observed as follows:

> "Having examined the provisions of the Karnataka Land Reforms Act and the aforesaid two judgments of this Court, we have no doubt in our mind that the Civil Court cannot be said to be ousted of the jurisdiction, in granting the relief sought for. It is too well settled that when a Special Tribunal is created under a special statute and the jurisdiction of the Civil Court is sought to be ousted under the said statute, it is only in respect of those reliefs which could be granted by the Special Tribunal under the special statute, the jurisdiction of the civil court cannot be said to be ousted.

8.The learned counsel appearing on behalf of the respondents relied on this case before us also contending that the jurisdiction of the civil court could not be ousted and it could decide as to the title of the disputed land. We cannot agree to this contention of the respondents. In paragraph no.8 of the aforesaid decision, this Court had observed as follows:

> "Looking at the provisions of section 48A of the Karnataka Land Reforms Act and the relief which is sought for in the present case, it is difficult to hold that the Tribunal had the jurisdiction of the civil court. Under Section 48A, the Tribunal can only grant the relief of declaring occupancy right in favour of an applicant provided the preconditions for the same are satisfied, namely, that the land was in possession of the tenant concerned on the relevant date. That being the position and the Tribunal under the Land Reforms Act not having *jurisdiction to grant relief of partition, the civil court itself has the jurisdiction to entertain the suit for partition.*"

From a plain reading of the observation of this Court in the aforesaid decision as quoted above, it is clear that the relief

that could be granted by the Civil Court itself which is a decree for partition could not be granted by the tribunal and it was only the civil court which can entertain a suit involving partition of the said land as we have already held that it was beyond the jurisdiction of the Land Tribunal. Therefore, the aforesaid Paragraph no. 8 on which reliance was placed by the respondents would not help them but in contrary would help the appellants because in that case this Court had clearly held that a relief for grant of partition rights could not be granted by the Tribunal. That apart, this Court in the case of *Mudakappa vs. Rudrappa & Ors.* [(1994) 2 SCC 57], laid down the law in respect of the question posed in this case which is reproduced as under:

> "If one of the members of the family cultivates the joint family, under these circumstances, pending the suit, when the question arises whether the member or the joint family is the tenant, that question should be decided by the Tribunal alone under Section 48A read with Section 133 and not by the civil court. Since the Tribunal constituted under the Act has been invested with the power and jurisdiction to determine rival claims, it should record the evidence and decide the matter so that its correctness could be treated either by an appeal or by judicial review, under Article 226 or under Article 227 as the case may be. But, it cannot by necessary implication, be concluded that when rival claims are made for tenancy rights, the jurisdiction of the Tribunal is ousted or its decision is subject of the decision once over by the Civil Court. It is clear from Section 48A(5) and Section 112B(bbb) read with Section 133, that the decision of the Tribunal is final under Section 133 (iii). The Civil Court has power only to decide other issues. It cannot, therefore, be said that the rival claims for tenancy or the nature of the tenancy are exclusively left to be dealt with by the Civil Court."

9. Thus in view of the aforesaid decision, we hold that the

A Civil Court had no jurisdiction to decide as to whether the joint family or one of the members was a tenant, when that question was considered finally and authoritatively on merits by the Land Tribunal Gadag. Therefore, we are of the view that the learned Additional District Judge, Dharwad, was perfectly justified in B view of ouster of jurisdiction of the civil court under Section 133 of the Act, in setting aside the judgment of the trial court to this extent. Consequent thereupon, we are, therefore, also of the view that the High Court was wrong in setting aside the order of the 2nd Additional District Judge, Dharwad on an appeal C preferred by the respondents.

10. Before we conclude, we may note that as observed herein earlier, the High Court in the earlier Writ Application by its order dated 17th of December, 1982, held on consideration of evidence produced by the parties and materials on record D that the disputed land was taken for cultivation jointly by the parties and, therefore, the parties were in joint cultivation. It would be evident from the order of the High Court passed on 17th of December, 1982, that only to demarcate the share of the parties, the matter was remitted back to the Land Tribunal. E Therefore, the question of reopening this issue, namely whether a person is in possession of the disputed land as a personal cultivator, or the disputed land was in joint possession of the family members of the parties, is no longer available to be agitated before the civil court. At the risk of repetition, we may F also note that before the Land Tribunal it was conclusively decided that the predecessor-in-title of both the parties had taken the disputed land for cultivation jointly and that they were jointly cultivating the same. That being the position, and in view of Section 133 of the Act, the jurisdiction of the Civil court G having been ousted and applying the principles as laid down by this Court in the case of *Mudakappa vs. Rudrappa & Ors.* (Supra), and *Balawwa & Anr. vs. Hasanabi & Ors.* (supra), in paragraph no. 7 and 8 of the same, as mentioned herein earlier, we are of the view that the High Court was in error in setting

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aside the judgment of the first Appellate Court and remanding the matter to the same for decision in the light of the observations made in the impugned judgment. A

11. Accordingly, we set aside the impugned judgment of the High Court thereby restoring the judgment of the 2nd Additional District Judge holding that the civil court had no jurisdiction to entertain the suit for declaration of title as it was within the exclusive jurisdiction of the Land Tribunal. B

12. The appeal is accordingly allowed. There will be no order as to costs. C

R.P. Appeal allowed.