LAXMAPPA BHIMAPPA HULSGERI BY LRS. AND ORS. A

v.

HANUMAPPA SHETTEPPA KORWAR AND ORS.

APRIL 13, 2004

[S. RAJENDRA BABU, DR. AR. LAKSHMANAN AND G.P. MATHUR, JJ.] B

Karnataka Land Revenue Act, 1964; Section 133/Karnataka Land Reforms Act; Ss. 5, 132 & 133/Bombay Tenancy and Agricultural Lands Act, 1948; Section 64(3) : C

Suit for declaration of title of disputed land filed by son—Suit decreed by trial Court in respect of half share of suit land—Reversed by first appellate Court holding that though first respondent and his mother possess proprietary rights in the suit land but these rights extinguished since vesting of the lands D *in Government from 1.3.1974, subject to rights of landlords and tenants thereon—Appeal allowed by High Court holding first respondent as a co-owner entitled for recovery of possession of the suit land—Judgment recalled by the High Court but later confirmed its earlier view with certain additional reasons—On appeal, Held: The findings of the first appellate Court that since* E *in the records of the Land Revenue Authority, the appellant/Vendee was a tenant, he would be treated as tenant but he had not acquired the title under the sale deeds which were invalid—However, the question whether he was a tenant, could not have been decided by it—It should have been decided by a Tribunal constituted under the Karnataka Land Reforms Act—Hence, the decree passed by the Courts below set aside and matter remitted to Trial Court to* F *refer the question to Land Reforms Tribunal for adjudication—Parties to maintain* **status quo** *till disposal of the case by the Trial Court—Directions issued.*

Recalling of Judgment by the Court—Effect of—Held: Entire judgment stood upset and not available for the Court to concur with the reasoning— G *Civil Procedure Code, 1908.*

First respondent filed a declaratory suit against appellant (Vendee) for declaring himself and his younger brother as owners of the disputed land and for other incidental reliefs. He submitted that the land originally

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A owned by his father, who had relinquished his rights in the property in favour of the first respondent and his ycunger brother on consideration by executing a registered deed dated 26.4.1960. Later, his father sold the same property/land by executing a registered sale deed dated 16.4.1963 in favour of the appellant. However, the appellant claimed that father of the first respondent borrowed certain sum of money from him and in lieu B thereof created a mortgage deed in respect of the suit property in his favour and subsequently he borrowed further sum of money from him and executed an advance lease deed for a period of 60 years in respect of the suit land. Thus he was shown as tenant in the revenue records. Later, father and mother of the first respondent approached him, took a further C sum of money and executed registered sale deeds dated 26.4.60 and 16.12.60 respectively in respect of certain portion of the suit property after obtaining requisite permission from the land Revenue Authority.

Trial Court decreed the suit in respect of half share of the suit land. On appeal, findings of the trial Court were upset by the first Appellate D Court holding that in the facts and circumstances of the case, the appellant became the tenant in respect of the entire land; that the relinquishment deed was not valid; that since mother of first respondent executed the sale deed in respect of certain portion of the land owned by her without obtaining requisite permission from the land Revenue Authority, no title E could be passed in that document in favour of the appellant; that first respondent, and after death of his younger brother, his mother were the co-owners in respect of certain portion of the land but their proprietary rights became extinguished from 1.3.1974 when the rights in the tenanted land had vested with the Government as per provisions of the Bombay Tenancy and Agricultural Lands Act. High Court allowed the second F appeal holding that first respondent as a co-owner of the suit land was entitled to the relief as claimed for recovery of possession of the suit property. Later, High Court recalled its order and finally disposed of the matter concurring with the earlier judgment giving additional reasons therefor. Hence the present appeal.

G Allowing the appeal, the Court

HELD: 1.1. The High Court merely referred to Section 133 of the Karnataka Land Revenue Act, 1964 to state that some of the entries in the revenue records indicated that the appellant was not in possession of H the lands. However, the first appellate Court after referring to the order

of permission granted by the jurisdictional Tahsildar concluded that since in these documents the appellant had been described as a tenant, he should be presumed to be a tenant notwithstanding the entries appearing in the record of rights. The presumption arising under Section 133 of the Karnataka Land Revenue Act, 1964 will, by itself, not be enough and if the same could be disturbed such a presumption can be decided with reference to any other material. While the first appellate Court gave importance to the permission granted by the Tahsildar (Ex.D-14), the High Court said that it is of no consequence. However, in the circumstances of the case the finding recorded by the first appellate Court is final. But in the second order made by the High Court it set out various principles which really have no bearing on the matter. The Court had to examine the effect of the documents on record and come to the conclusion one way or the other. The first appellate Court considered the effect of these documents and came to the conclusion that it had been established that the appellant was in possession of the suit land only in the capacity of a tenant and he had not acquired title under the sale deeds in question since the said sale deeds were invalid. [101-B-C-D-E]

1.2. No civil court can decide any question as to whether land in dispute is an agricultural land or whether the person claiming to be in possession thereof is or is not a tenant of the said land as on 1.3.1974. All tenancies came to an end in terms of Section 5 of the Act. Thus, what is contemplated by Sections 132 and 133 of the Karnataka Land Reforms Act is that if there is any existing tenancy rights as on 1.3.1974 then Civil Court shall have to frame an issue relating to tenancy and refer the same to the Tribunal. [102-B-C]

1.3. When the High Court recalled its earlier order, the entire judgment stood upset and it was no longer available for the Court to either concur or accept that reasoning. [100-F]

1.4. The question whether on 1.3.1974 when the Act came into force the appellant was a tenant in respect of the land in question or not, could not have been decided by Civil Courts. Hence, the decrees passed by the Courts below are set aside and the matter is remitted to the Trial Court to refer issue 10-A, to Land Reforms Tribunal for adjudication and report. The parties shall maintain *status quo* as to possession of the land until disposal of matters before the Tribunal and the Trial Court. [102-E-F]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2089 of 1998.

From the Judgment and Order dated 17.11.97 of the Karnataka High Court in R.S.A.No. 205 of 1988

S.K. Kulkarni, M. Gireesh Kumar, Ankur S. Kulkarni, Kh. Nabin Singh
B and Ms. Sangeeta Kumar for the Appellants.

Rajesh Mahale, R.C. Kohli and K.C. Sundarshan for the Respondents.

The Judgment of the Court was delivered by

C **RAJENDRA BABU, J.** A suit was filed by the first respondent for declaration that he and third Respondent Fakirawwa are the owners of the suit land and for possession from the original Appellant (Laxmappa) and for other incidental reliefs. He had impleaded his father as second defendant in the suit and his mother as third defendant. It is claimed that his father was a spend thrift; that since he and his younger brother did not want to continue
D to be joint and on receiving a sum of Rupees One thousand relinquished his interest in the joint family property by executing a registered deed dated 26.4.1960; that thereafter he and his younger brother became owners in possession of the said properties; that about 4 or 5 years later his younger brother died and in terms of the Hindu Succession Act their mother succeeded
E to his share; that thus the said properties came under his and his mother's ownership and possession; when the matter stood thus even though his father had relinquished his rights over the plaint schedule land, he executed a registered sale deed on 16.4.1963 in favour of the appellant and put him in possession of the same; he claimed that the said sale in favour of Appellant is not binding on him and his mother.

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The appellant denied the execution of the relinquishment deed dated 26.4.1960 and contended that as the father of the first respondent had incurred debts and for discharge of the same borrowed from the appellant a sum of Rs.2000 and created a mortgage in 1950 in his favour in respect of entire land in R.S. No. 15/A measuring 11 Acres 16 guntas. Again the father of 1st
G respondent borrowed Rs. 3000 and executed an advance lease deed ('*Agavu Lavani*') in favour of respondent for a period of 60 years and executed a registered deed on 26.8.1952 in respect of entire acre of 11 acres 16 guntas of land. His name is included in revenue records as tenant in ME 1014 and has been in possession thereof since then. During the subsistence of that lease
H the father of the first respondent again approached the appellant for money

for family necessity and to discharge his prior debts and took a sum of Rs. 1000 and executed a registered sale deed dated 26.4.1960 in respect of an extent of 5 acres 30 guntas on the northern side in that land after obtaining the requisite permission from the jurisdictional Tahsildar; that thus the appellant became the absolute owner of that portion of 5 acres 30 guntas; that the mother of the first respondent was also in need of money for family necessity and for discharging the debt due by her husband borrowed a loan of Rs. 2000 from him and executed a registered sale deed in that behalf on 16.12.1960 acting as the guardian of the first respondent and his younger brother who were minors at that time; that from that date onwards he became the absolute owner also and has been in possession of the same; that the father of the first respondent, who was again in need of money, executed a registered sale deed in favour of the appellant for a sum of Rs. 1000 on 16.4.1983 in respect of certain lands after obtaining permission of the Tahsildar and thus the said two sale deeds dated 16.12.1960 and 16.4.1963 were legally valid and binding on defendants 2 and 3 and the plaintiff. In this manner, the appellant claimed that he became the absolute owner of the entire extent of 11 acres 16 guntas both as a tenant and subsequently as a full owner thereof and continued to be in possession of the said land as a tenant. He also raised certain contentions regarding limitation and that he had perfected his title by adverse possession over the land. He also alternatively contended that if the deed of transfer dated 16th April 1963 is invalid, his tenancy rights were not affected and from 1.3.1974 the tenanted land vested in Government and that, therefore, the plaintiff is not entitled to seek the relief of possession from him. He also contended that the relinquishment deed referred to in the plaint was not a genuine one and did not affect his rights; that the plaintiff and defendants Nos. 2 and 3 had continued to be the members of a joint family and that the second defendant was its manager.

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On this basis several issues were raised by the trial court. Two issues are with reference to claims regarding tenancy and they are :

> "10A. If the sale deed dated 16.4.1963 is invalid whether the tenancy rights of defendant-1 subsists on 1.3.1974?
>
> 10B. Whether the plaintiff is entitled to possession if defendant-1 is held to be a tenant on the date of suit?"

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The trial court held on these two issues as follows :

> "25. *Issue No.10B*: There is no question of any tenancy rights involved

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A in this suit. No permission of the Tehsildar was obtained for the execution of the sale deed by defendant No. 3. Moreover, defendant No. 1 has taken a sale deed from defendant No. 2 on the allegation that defendant No. 2 is the owner of the suit land. Before that, defendant No.1 had recognised the title of the minor plaintiff and his brother Yallappa by taking agreement and sale deed is to be held invalid. Therefore, having taken a document from defendant No. 2, he cannot now content that he is a tenant of the suit land. Hence, my findings on issue No. 10B is answered in the negative.

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26. *Issue No.10A*: The defendant No. 1 was not the tenant of the suit land on 1.3.1974 or on the date of suit."

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The trial court decreed the suit in respect of half share of suit land.

On appeal, the said findings of the trial court were upset and the suit filed by the first respondent was dismissed.

D The learned District Judge noticed that the land comprised in R.S. No. 15 measuring 11 acres 16 guntas was the ancestral property of the second defendant and that, therefore, the plaintiff was also a coparcener of the land. But there are several registered documents filed in the court in the shape of Ex. P-2, D-10, D-11, D-13, D-12 and D-6. As found by the first appellate E court, registered lease deed dated 26.4.1960, which is Ex. P-2, had not been acted up at all at any rate in respect of the suit land. The first appellate court also found that Ex. D-10, which is a registered lease deed in respect of entire extent of 11 acres 16 guntas, became effective at least partially because admittedly the second defendant had sold the northern extent of 5 acres 30 guntas to the appellant under the registered sale deed Ex. D-11 dated 26.4.1960 F after obtaining the permission of the jurisdictional Tahsildar to effect that sale. But on the same day, he executed sale deed Ex. D-11 and release deed Ex. P-2 and both the documents were scribed by PW-2. Therefore, the first appellate court found that the first defendant cannot be heard that he was not aware of the execution of the release deed because that document and Ex. D-G 11 had come into existence simultaneously. Thus the question of importance is whether the trial court was justified in concluding that under Ex. D-10 the first defendant did not become the tenant in respect of the suit land which is the southern portion of the survey number and that the release effected under Ex. P-2 was acted upon. The second defendant had no right to effect the sale of the suit land in favour of the appellant under Ex. D-8 after obtaining the H permission of the Tahsildar on the same date as evidenced by Ex. D-14.

However, if it is to be concluded that under Ex. D-10 the first defendant became tenant in respect of the entire survey number, the lower court's judgment and decree releasing the plaintiff's half share in the suit land will have to be set aside. On appreciation of the documents and the oral evidence in the case, the first appellate court held that the entries in the various revenue records showed that the suit land measuring 5 acres 16 guntas was either under a personal cultivation of the second defendant or of two other tenants upto 1960-61. It was never the case of the plaintiff that his father had personally cultivated the suit land for a couple of years and then leased it to two others for one year each and there was again personal cultivation of it. If the first defendant was not the tenant at all in respect of the entire land in view of Ex. D-10 it was improbable that an attempt was made as far back as 1963 by defendants 1 and 3 to obtain the permission of the jurisdictional Tahsildar for selling away the suit land to the first defendant. Therefore, the suit was filed nearly 12 years after the order was passed by the Tahsildar. He found that Ex. D-14 disclosed that the tenant in occupation of the suit land during those days was the appellant and there was no need for initiating proceeding before the Tahsildar. The first appellate court, therefore, found that under Ex. D-10 the first defendant became the tenant in occupation in respect of the northern extent of 5 acres 30 guntas only and not the southern suit land measuring 5 acres 26 guntas and that he was the tenant in respect of the entire extent of 11 acres 16 guntas of land. On examination of the documents, the first appellate court also gave a finding that the relinquishment deed was not valid and upheld the view of the trial court that the second defendant had no subsisting rights in the suit land to be conveyed to the first defendant under Ex. D-6 and that, therefore, the first defendant got no rights under that document over the suit land. The learned District Judge found that the finding recorded by the trial court on several issues was justified in the circumstances of the case; that Ex. D-12 executed by the third defendant in respect of an extent of 3 acres 26 guntas was not after obtaining permission of the jurisdictional Tahsildar as required under Section 64(3) of the Bombay Tenancy and Agricultural Lands Act, 1948 and, therefore, no title could pass in that document; that Ex.D-12 was void. The finding of the trial court in this regard was not upheld. Ex. D-6 and 12 did not convey any proprietary rights to the first defendant at all in respect of the suit land and the plaintiff and the third defendant were the co-owners of that extent but those rights of their's became extinguished from 1.3.1974 having regard to the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948. Therefore, it came to the conclusion that the plaintiff's suit required to be dismissed. The learned Judge found that the plaintiff-first respondent had no status as a co-owner of

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A the suit land as on the date of the suit. Neither the first respondent nor his father had any rights in respect of the same during the vesting of the tenanted lands in the Government subject to the rights of landlords and tenants, specially saved under the Karnataka Land Reforms Act, 1961 and, therefore, the said cross-objections filed were dismissed.

B Thereafter, the matter was carried in second appeal. The High Court allowed second appeal by an order made on 9.3.1985 and the judgment and decree passed by the first appellate court was set aside and held that the appellant as a co-owner of the suit land is entitled to the relief claimed for recovery of possession over the entire suit land. Subsequently, the order C made on 9.3.1995 allowing the second appeal was recalled and the appeal was posted for fresh hearing. On 17.11.1997 the High Court finally disposed of the appeal after referring to the judgment dated 9.3.1995 by stating that it concurs with the earlier order but gave certain additional reasons. This is how, the learned Judge stated :-

D "It is also necessary to place on record that this appeal is disposed of in the same manner mentioned in the last paragraph above by another single Judge of this Court; that judgment was recalled on the technical objection of non-impleading of the L.Rs of one of the parties. However, that was disposed of on merits, taking into consideration the legal position as well. I have concurred with the earlier view, though I E have give additional point in support of that view."

It is difficult to appreciate the course adopted by the learned Judge. If all the parties had not been present who could have been impleaded then the judgment rendered thereto will not be one which was decided in the presence of all the parties. Therefore, when the earlier order dated 9.3.1995 was recalled, F the entire judgment stood upset and is no longer available for the learned Judge either to concur or accept that reasoning. We may have to treat that part of reasoning as part of his judgment to properly appreicate the case.

Whether the appellant became the owner in possession of the entire suit G land by virtue of registered sale deed Ex. D-6 dated 16th April 1963 and in the event that sale deed is found to be invalid for any reason, the sale deed Ex.D-12 dated 16.12.1960 is binding on the plaintiff in respect of extent of 5 acres 26 guntas and whether his rights in respect of the remaining extent as a tenant are not affected and even if the said sale deed Ex.D-12 is also found to be invalid, then his rights as a tenant in respect of the entire suit land H is protected. It is also to be seen whether the reliefs claimed by the first

respondent in the suit land is tenable and as a co-owner with the third defendant he is entitled to those reliefs in respect of the entire suit land.

These aspects were not looked into by the High Court in the course of its first order. The High Court merely referred to Section 133 of the Karnataka Land Revenue Act, 1964 to state that some of the entries in the revenue records indicated that the appellant was not in possession of the lands. However, the first appellate court after referring to the order of permission granted by the jurisdictional Tahsildar concluded that since in the said documents the appellant had been described as a tenant, he, therefore, should be presumed to be a tenant notwithstanding the entries appearing in the record of rights. The presumption arising under Section 133 of the Karnataka Land Revenue Act, 1964 will, therefore, by itself, not be enough and if the same could be disturbed such a presumption can be decided with reference to any other material. While the first appellate court gave importance to Ex. D-14 the permission granted by the Tahsildar, the High Court said that it is of no consequence. However, in the circumstances of the case the finding recorded by the first appellate court is final. It has taken the view that description of the appellant in the order of permission granted by the jurisdictional Tahsildar would tilt the matter which clearly indicated that the appellant was the tenant in respect of the entire land. But in the second order made by the High Court the learned Judge has gone on to set out various principles which really have no bearing on the matter. The court had to examine the effect of the documents on record and come to the conclusion one way or the other. The first appellate court considered the effect of these documents and came to the conclusion that it had been established that the appellant was in possession of the suit land only in the capacity of a tenant and he had not acquired title under the sale deeds in question since the said sale deeds were invalid.

A contention now put forth before us is that in view of the fact that the sales having been effected in respect of the suit lands the tenant's rights stood extinguished and proprietary rights were replaced or the tenant's rights stood converted to the proprietary rights cannot be accepted because when the sale transaction itself has been held to be invalid, there was no transaction in the eye of law and in the absence of such transaction, there was no circumstance which obliterated the rights arising as a tenant. Thus it is contended that the rights stood unaffected and in this context, it is necessary to examine the contention put forth before us is that the issue as to tenancy ought to have been referred to the Land Reforms Tribunal and ought not to have been

A decided by the trial court itself.

Section 132 of the Karnataka Land Reforms Act bars the jurisdiction of civil courts in matters, which are to be decided by a Tribunal. Section 133 of the Karnataka Land Reforms Act provides for suits and other proceedings that are required to be decided by a Tribunal under the Act. No civil court B can decide any question as to whether land in dispute is an agricultural land or whether the person claiming to be in possession thereof is or is not a tenant of the said land as on 1.3.1974. All tenancies came to an end on 1.3.1974 under Section 5 of the Act. Thus, what is contemplated by Sections 132 and 133 of the Karnataka Land Reforms Act is that if there is any C existing tenancy right as on 1.3.1974 then civil court shall have to frame an issue relating to tenancy and refer the same to Tribunal.

In the present case, the suit had been brought by the first respondent for various reliefs including that of possession and that right had been defeated on the ground that on the relevant date the suit lands were tenanted lands and, D therefore, from 1.3.1974 he did not have rights as owner and the land having vested in the State and on that basis suit had been dismissed. It is not so much as to declare the rights of the first appellant that such finding had been recorded but it is more to defeat the claim of the appellant. Whether the first defendant can protect his possession otherwise or not is not to be decided in these proceedings. *Prima facie*, the first appellate court could not hold that E the appellant was a tenant in respect of the land and issues 10-A and 10-B should have been decided only by a Tribunal constituted under the Karnataka Land Reforms Act. The question whether on 1.3.1974 when the Act came into force the appellant was a tenant in respect of the land in question or not could not have been decided by civil courts. Hence, the decrees passed by F High Court, First Appellate Court and trial court are set aside and the matter is remitted to the trial court to refer issue 10-A to Land Reforms Tribunal for adjudication and report. In the meanwhile, the parties shall be directed to maintain *status quo* as to possession of the land until disposal of matters before the Tribunal and the trial court.

G In the result, the appeal is allowed accordingly.

S.K.S. Appeal allowed.