RAMACHANDRA KRISHNA BHATTA A
v.
STATE OF KARNATAKA AND ANR.
(Civil Appeal Nos.7119-7120 of 2000)

MARCH 14, 2008 B

[TARUN CHATTERJEE AND P. SATHASIVAM, JJ.]

Land Reforms:

Land belonging to temple – Land Tribunal granted occupancy rights to appellant – Appellate Authority and High Court held that lands in question were joint family properties and that land Tribunal failed to cause public notice in the village and to deity before granting occupancy rights and that nature of possession of appellant cannot be regarded as tenant – Even appellant's plea that he was tenant was rejected in a suit which had become final – In view of factual finding by Appellate Authority and High Court, interference under Article 136 of Constitution not called for – Karnataka Land Reforms Act, 1961 – ss.48A, 121, 133.

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The lands in question owned by temple were granted for cultivation on tenancy basis to 'M' who was performing pooja in the temple. He had three sons. After his death, his eldest son started performing pooja and cultivating the lands, and on his death, it was performed by second son. Third son expired. After death of second son, respondent no.2, son of eldest son started performing pooja and cultivation. In 1940, he relinquished his rights and surrendered the lands to temple authorities and left the village. In 1943, temple authorities entrusted the work to appellant, who was son of third son of 'M' and to his mother.

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In 1953, respondent no.2 filed a suit for partition and possession of joint family properties, which was

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A dismissed on the ground that properties were relinquished and for want of sanction of Charity commissioner. The name of appellant was registered in records of right. The objection raised thereagainst by respondent no.2 was rejected. In 1963, respondent no.2 B filed another suit for partition and possession of suit lands, which was also dismissed. Respondent no.2 filed second appeal before High Court, during pendency of which Karnataka Land Reforms Act, 1961 was amended and it was provided that all agricultural lands held by or C in possession of tenants would vest in the Government free from all encumbrances.

S.133 of the Act provided that Tribunal constituted under the Act alone has jurisdiction to decide the question of tenancy. The appellant filed application for grant of D occupancy rights. No application for grant of occupancy rights was filed by respondent no.2. Meanwhile during pendency of proceedings before Tribunal, High Court allowed the second appeal of respondent no.2 and remanded the matter to trial Court for disposal on merits E by fixing the share. In 1974, Tribunal considered the application filed by appellant and held that appellant was tenant and granted occupancy rights to him. Against the said order, respondent no.2 filed writ petition.

The remanded suit was decreed. Accordingly F respondent no.2 was held entitled to 2/3rd share in suit properties.

The writ petition of respondent no.2 was allowed by High Court and matter remanded to Tribunal. Tribunal G granted occupancy rights to appellant. Aggrieved by the said order, respondent no.2 filed writ petition, which was transferred to appellate authority. Appellate authority allowed the appeal holding that disputed lands were joint family properties belonging to all three parties, which was upheld by High Court. Hence the present appeal.

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Dismissing the appeal, the Court

HELD: 1. The Appellate Authority has rightly pointed out that as per s.48A of the Karnataka Land Reforms Act, it is incumbent upon the part of the Land Tribunal to give public and personal notices before passing an order in an application filed under s.48. It is not in dispute that the Land Tribunal has not heard the representative of the Temple. A reading of sub-section (2) of s.48A makes it clear that on receipt of application, the Tribunal has to issue public notice in the village in which the land is situated calling upon the landlord and all other persons having interest in the land to appear before it on the date specified in the notice. It is also incumbent on the part of the Tribunal to issue individual notice to the persons mentioned in the application and also to such others as may appear to it to be interested in the land. The factual finding of the Appellate Authority shows that the Land Tribunal failed to cause either public notice in the village or to the deity Temple. In view of the same, it is clear that the Land Tribunal has not fulfilled the requirement which is mandatory and the Appellate Authority rightly interfered with the order of the Land Tribunal and set aside the same. A reading of the order of the High Court shows that only for the purpose of satisfying itself as to the illegality or as to the regularity of such order or proceeding, the High Court is permitted to interfere. The High Court, in the impugned order, very well noted the factual finding of the Land Reforms Appellate Authority that the nature of possession of the appellant cannot be regarded as tenant of the land, and that there is absolutely no evidence in respect of its claim that he paid rent to the 3rd respondent as a tenant under him. On the other hand, his plea that he was a tenant of the land was not allowed to be raised and rejected in suit by respondent no.2 which had become final. In the light of the said materials, after finding that the Appellate Authority was right in holding that the

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A **appellant's claim of tenancy was not established and there is no illegality or procedural irregularity which calls for interference in revision, under s.121, dismissed the same. [Paras 6-8] [109-B, C, D, F, G; 110-A, B, C, D]**

B **2. In view of the factual finding arrived by the Land Reforms Appellate Authority and affirmed by the High Court which is a Revisional Authority, in the absence of any acceptable material, interference by this Court under Article 136 of the Constitution of India is not warranted. [Para 9] [110-D, E]**

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7119-7120 of 2000,

From the Judgment and Order dated 15.12.1998 and 5.11.1999 of the High Court of Karnataka at Bangalore in D L.R.R.P. No. 2810/1989 and C.P. No. 487/1999 respectively.

R.S. Hegde (for P.P. Singh) for the Appellants.

S.N. Bhat, N.P.S. Panwar, D.P. Chaturvedi, Amit Kr. Chawla and Sanjay R. Hegde for the Respondents.

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The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1) These appeals are directed against the judgment and order dated 15.12.1998 passed by the High Court of Karnataka at Bangalore in L.R.R.P. No. 2810 F of 1989 and the judgment and order dated 5.11.1999 in C.P. No.487 of 1999 dismissing the same.

2) Brief facts, in a nutshell, are as under:

Land bearing Survey No. 7/3 measuring 1 acre 4 guntas G (Bagayath) and Survey No. 56/1 measuring acres 21 guntas (wet) of Kannenhalli village, Yellapur Taluq are agricultural lands and were owned by the Gopal Krishna Devaru Temple. The lands were granted for cultivation on tenancy basis to the person performing the daily pooja in the temple. No separate rent was being paid. Originally one Mahabaleshwar Bhatta was

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performing pooja in the temple and was cultivating the lands. He had three sons namely, Shambu Bhatta, Narayan Bhatta and Krishna Bhatta. After his death, his eldest son, Shambu Bhatta started performing the pooja in the temple and cultivating the lands in question. After the death of Shambu Bhatta, Narayan Bhatta, second son of Mahabaleshwar Bhatta, started performing pooja in the temple and also cultivating the lands. Krishna Bhatta, third son of Mahabaleshwar Bhatta expired in the meantime. After the death of Narayan Bhatta, Thimmappa, son of Shambu Bhatta started performing the pooja in the temple and also cultivating the lands. In the year 1940, Thimmappa Bhatta, respondent No.2 herein, relinquished his rights and surrendered the lands to the temple authorities and left the village and started cultivating other lands thereat. In the year 1943, the Trustees of the temple entrusted the rights of performing pooja in the temple and cultivating the lands to Ramachandra Krishna Bhatta, appellant herein and his mother. The appellant is the son of Krishna Bhatta. On 10.2.1948, the name of the mother of the appellant herein was recorded in the Record of right as protected tenant of Sy. No. 7/3 and the name of the appellant as ordinary tenant for Sy. No. 56/1 vide Entry Nos. 198 and 238 respectively. In the year 1953, Thimmappa Bhatta, respondent No.2 herein, filed a suit being Suit No. O.S. 19/1953 before the Civil Judge, Junior Division, Haliyal for partition and possession of joint family properties. In the plaint itself, respondent No.2 admitted that he had left the village and gone to village Hittalli to look after the properties of his sister. On 31.5.1958, the trial Court held that in so far as the scheduled lands are concerned, the properties were shown as tenanted lands assigned for worship of Shri Gopal Krishna Dev Temple. The trial Court also held that the plaintiff (respondent No.2 herein) had given up his claim for the purpose of the suit and that the suit insofar as it relates to these lands is held to be incompetent for want of sanction of Charity Commissioner. As regards the remaining immovable properties, there was no dispute and it was ordered to be partitioned. After the death of the mother of the appellant herein, the name of the appellant was registered vide No. 303

A in respect of both the surveys in the Record of rights dated 27.8.1961. In this regard, an objection was raised by respondent No.2 herein but the same was rejected. Thereafter, in the year 1963, respondent No.2 filed another suit being O.S. No. 70 of 1963 for partition and possession of the suit lands. Prior to filing B of the suit, he applied to the Charity Commission for permission to file the suit for partition of the suit lands. The said request was rejected. O.S. No.70 of 1963 was also dismissed. Against the said judgment and decree, respondent No.2 filed an appeal being R.S.A. No. 930 of 1973 before the High Court of C Karnataka.

3) During the pendency of the second appeal, the Karnataka Land Reforms Act, 1961 (hereinafter referred to as "the Act") was amended and it was, *inter alia,* provided that all agricultural lands held by or in possession of tenants shall vest D in the Government free from all encumbrances. Section 45 confers a right on the tenants to apply for grant of occupancy rights. Section 48 A provides for filing of application by a tenant to the Tribunal holding of enquiry etc. Section 133 provides that a Tribunal constituted under the Act alone shall have jurisdiction E to decide the question of tenancy and Section 132 bars the jurisdiction of Civil Courts to decide any question required to be decided by the Tribunal. The appellant herein filed an application in Form No.7 for grant of occupancy rights. However, no application was filed by respondent No.2 for grant of F occupancy rights either for himself or on behalf of the joint family. In the meantime, during the pendency of the proceedings before the Land Tribunal, the High Court considered RSA No. 930 of 1973 filed by respondent No.2 herein and while allowing the appeal remanded the matter to the trial Court for disposal on G merits by fixing the share. On 5.11.1974, the Tribunal constituted under the Act considered the application filed by the appellant and held that the appellant was the tenant as on 1.3.1974 and accordingly granted occupancy rights to the appellant. Against the said order, respondent No.2 moved Writ Petition No. 19619 of 1979 before the High Court of Karnataka. The remanded H

suit which was renumbered as O.S. No.34 of 1979 was decreed on 18.12.1980 holding that the defendants had not perused all issues except issue No.5 and that as regards issue No.5 the suit was not affected by Bombay Prevention of Fragmentation and Consolidation of Holdings Act. Accordingly, plaintiff – Thimmappa (respondent No.2 herein) was held entitled to 2/3rd share in both the surveys. On 9.6.1983, the High Court passed an order in W.P. No.19619 of 1979 filed by respondent No.2 by allowing the writ petition and remanded the matter back to the Tribunal for fresh consideration. The Tribunal considered the application afresh and held enquiry as contemplated in the Act and the Rules. On 16.8.1985, the Tribunal held that the appellant alone was cultivating the land as tenant on the appointed date and the temple was the owner of the lands and accordingly granted occupancy rights to the appellant. Aggrieved by the said order, respondent No.2 herein filed Writ Petition before the High Court. Consequent upon constitution of appellate authority, the matter was transferred before the said Authority for consideration and was registered as DAAA: AP: 244.330/86. On 31.1.1989, the appellate Authority held that the lands were tenanted lands, therefore, allowed the appeal and quashed the order of the Tribunal. Dissatisfied therewith, the appellant preferred LRRP No. 2810 of 1989 before the High Court and the same was dismissed by order dated 15.12.1998. On 5.11.1999, the review petition filed by the appellant herein was also dismissed. Hence, aggrieved by the said orders, the appellant preferred the above appeals before this Court by way of special leave.

4) Heard Mr.R.S. Hegde, learned counsel for the appellant, and Mr. S.N. Bhat, learned counsel for the respondents.

5) It is the grievance of the appellant that though the Land Tribunal, by order dated 16.08.1985, declared and granted occupancy right in his favour in respect of the land in Survey Nos. 56/1 to an extent of 2-21-0 and 7/3 to an extent of 1-4-0 of Kannenalli village, the Land Reforms Appellate Authority and the High Court exercising power under the Act committed an error in setting aside the order of the Land Tribunal and rejecting

A the application of the appellant seeking occupancy right in respect of the said lands. In view of narration of the facts in the earlier paragraphs, there is no need to traverse the same once again. It is true that on the application made by the appellant who is the son of Krishna Bhatta and grand-son of B Mahabaleshwar Bhatta, Karnataka Land Tribunal, after finding that the lands in question are temple lands which are being cultivated by the applicant (appellant herein) in recognition of his temple service and is being continuously cultivating these lands from 1944, arrived at a conclusion that he is cultivating C the lands which belong to the temple as tenant and, therefore, he is entitled to occupancy rights. Aggrieved by the said decision, Mahabaleshwar Narayan Bhatta and Thimmappa Bhatta, sons of Shambu Bhatta and Narayan Bhata respectively and grand-sons of Mahabaleshwar Bhata filed appeal before D the Land Reforms Appellate Authority. The Appellate Authority, after analyzing the materials, particularly judgment and decree of the civil court as well as orders of the authority, came to the conclusion that the disputed lands are joint family properties belonging to all the three parties, namely, Ramachandra Krishna Bhatta, Mahabaleshwar Bhata and Thimmappa Bhatta. It is E relevant to point out that the Appellate Authority came to such conclusion on the basis of the decree of the civil court vide O.S. No. 37 of 1979. The following conclusion of the Appellate Authority is relevant:

F "...Since the 3rd respondent has not taken any objection, we come to the conclusion that the disputed lands are the tenancy lands of undivided family of the appellants and the 3rd respondent. From these undisputed facts, it is clear that the right of performing the pooja of Sri Gopalkrishna G deity and other services and the enjoyment of disputed lands were not given to the 3rd respondent, but pooja and other services were the undivided rights of the joint family in addition to the tenancy rights."

Based on the finding rendered by the civil court and other H materials placed before it, the Appellate Authority has concluded:

"Therefore, there is no merit in the contention of the 3rd respondent that he alone is in possession and cultivating the disputed lands for the relevant period and he is eligible for the occupancy rights and we answer accordingly by rejecting his contention."

6) The Appellate Authority has rightly pointed out that as per Section 48A of the Act, it is incumbent upon the part of the Land Tribunal to give public and personal notices before passing an order in an application filed under Section 48. It is not in dispute that the Land Tribunal has not heard the representative of Shri Gopalkrishna Devaru Temple. A reading of sub-section (2) of Section 48A makes it clear that on receipt of application, the Tribunal has to issue public notice in the village in which the land is situated calling upon the landlord and all other persons having interest in the land to appear before it on the date specified in the notice. It is also incumbent on the part of the Tribunal to issue individual notice to the persons mentioned in the application and also to such others as may appear to it to be interested in the land. Sub-section (3) prescribes form of the application, form of the notices and the manner of publishing or serving the notices. Sub-section (4) says that where no objection is filed, the Tribunal, after verification, pass an order to either grant or reject the application. As per sub-section (5) where an objection is filed disputing the validity of the applicant's claim or setting of a rival claim, it is incumbent on the part of the Tribunal to conduct enquiry and thereafter determine the person entitled to be registered as occupant and pass orders accordingly. The factual finding of the Appellate Authority shows that the Land Tribunal failed to cause either public notice in the village or to the deity Gopalkrishna Devaru Temple. In view of the same, it is clear that the Land Tribunal has not fulfilled the requirement which is mandatory and the Appellate Authority rightly interfered with the order of the Land Tribunal and set aside the same.

7) The Appellate Authority has also concluded that there is no acceptable material holding that the appellant alone was cultivating the land and entitled for the grant of occupancy right.

A 8) The High Court considered the revision petition filed by the appellant before it under Section 121A of the Act. A reading of the revisional jurisdiction of the High Court shows that only for the purpose of satisfying itself as to the illegality or as to the regularity of such order or proceeding, the High Court is B permitted to interfere. The High Court, in the impugned order, very well noted the factual finding of the Land Reforms Appellate Authority that the nature of possession of the appellant cannot be regarded as tenant of the land. The High Court has also concluded that there is absolutely no evidence in respect of its C claim that he paid rent to the 3rd respondent as a tenant under him. On the other hand, his plea that he was a tenant of the land was not allowed to be raised and rejected in O.S. No. 34/79 which had become final. In the light of the said materials, after finding that the Land Reforms Appellate Authority was right in D holding that the appellant's claim of tenancy was not established and there is no illegality or procedural irregularity which calls for interference in revision, under Section 121, dismissed the same.

9) In view of the factual finding arrived by the Land Reforms Appellate Authority and affirmed by the High Court which is a E Revisional Authority, in the absence of any acceptable material, we are of the view that interference by this Court under Article 136 of the Constitution of India is not warranted.

10) In the light of the above conclusion, the appeals are liable to be dismissed as devoid of any merit and accordingly F dismissed. No costs.

D.G. Appeal dismissed.