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A.M. RAMANNA

v.

LAND TRIBUNAL, MANDYA TALUK AND ORS.

JULY 12, 2007

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[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Land Laws:

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Mortgage of suit land—Redemption and possession taken back—Mortgagee granted occupancy rights on the ground that after redemption of mortgage, land was given on lease to him—Challenged by purchaser of the land—Appellate authority doubting the veracity of lease deed, rejected the claim of mortgagee—High Court set aside the order of appellate authority—On appeal, held: High Court erred in interfering with factual findings recorded by appellate authority—In Pahari documents name of mortgagee was not entered as tenant—Rather name of purchaser entered in the Patta book and Pahari documents—Moreover, mortgagee was Patel of village and had full knowledge of sale transaction and also had signed in Patta book for having received land tax from the purchaser—Karnataka Land Reforms Act, 1961—s.121A.

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On 18.11.1960, 'B' mortgaged suit land in favour of his brother 'T' for a period of 10 years. Though the mortgage period was upto the year 1970, 'B' redeemed mortgage on 27.8.1963 itself. However, the case of original tenant 'T' was that on 30.8.1963, 'B' had executed a lease deed in his favour in respect of certain lands including the suit land. 'T' filed an application claiming occupancy rights in respect of suit land, which was allowed by the Tribunal.

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Appellant claiming to be the purchaser of land from 'K' in the year 1972 approached the appellate authority. Appellate authority doubting the veracity of the lease deed rejected the claim of 'T'. The Revision Petition was then filed before the High Court. The High Court was of the view that there was no discussion about the genuineness of the lease deed. Finally, it was concluded that K was not examined either before the Tribunal or before the Appellate Authority by appellant, to substantiate his case that it was 'K' who was the owner of the land from 1963 to 1972 from whom appellant purchased the land

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in the year 1972. Accordingly the order of the appellate authority was set aside. Hence the present appeal. A

Allowing the appeal, the Court

HELD: 1. It is admitted position that the possession by 'B' was taken at the time of redemption, and the possession was given to 'K' and 'K' had handed over possession to the appellatant. [Para 10] [312-G] B

2. In his cross examination 'T' had admitted that after redeeming the mortgage for about 2 to 3 years he had not done guthige of the land and gave the same to this younger brother 'B'. [Para 13] [313-G] C

3. The Appellate Authority referred to the statement in the cross-examination of 'T' and came to hold that he was not in possession of the land on 30.8.1963. The Pahari documents of the land were examined and it was noted that the possession and enjoyment of land by 'T' was not there from 30.9.1963 and the same was not established. In the Pahari documents of the land his name was not entered as tenant. On 30.9.1963, 'B' sold the disputed land to his father-in-law. After such sale in the Kandayam Patta Book and Pahari documents of the disputed land, name of 'K' the purchaser was entered. He had even paid the land tax to the State Government. 'T' who was the village Patel has himself signed for having received the land tax in the Kandayam. Contrary to what the High Court has observed, the Appellate Authority in detail has examined the question as to the genuineness of the lease deed. In the statement recorded by the Land Tribunal, it has been clearly admitted that the disputed land was being cultivated by the 'K' and his son in law 'B' jointly. Therefore, the Appellate Authority inferred that the sale deed was in force. After examining the materials on record, the Appellate Authority recorded a categorical finding that the lease deed was not a genuine document and it was not a believable document. The Appellate Authority noted that 'T' was Patel of the village and he had full knowledge of the transaction. High Court erred in holding that there was no discussion on the factual aspect as to the genuineness of the document. No evidence was adduced to substantiate the claim of possession. [Para 14] [314-A-E] D E F G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 669 of 2001.

From the Final Judgment & Order dated 4.9.1998 of the High Court of Karnataka at Bangalore in L.R.R.P. No. 2535 of 1990.

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A G.V. Chandrashekar, Anjana Chandrashekar and P.P. Singh for the Appellant.

Guntur Prabhakar for the Respondent.

The Judgment of the Court was delivered by

B **DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the order passed by learned Single Judge of the Karnataka High Court allowing the revision petition filed under Section 121-A of the Karnataka Land Reforms Act, 1961 (in short the 'Act'). The non-official respondent No.2 C.L. Thammaiah (since dead and substituted by his legal heirs) had filed the revision before **C** the High Court questioning correctness of the order dated 28.2.1990 passed by the Land Reforms Appellate Authority, Mandya, reversing the order passed by the Land Tribunal, Mandya on 21.1.1988. Stand before the High Court was that the claim for grant of occupancy, though initially accepted by the Land Tribunal was erroneously rejected by the Appellate Authority on re-**D** appreciation of the evidence.

2. Background facts as noticed by the High Court in a nutshell are as follows:

E Thammaiah had two brothers, viz. Linge Gowda and Bore Gowda. Bore Gowda is no more and his wife and daughter, Kempamma and Sunandamma are respondents 3 and 4 respectively in this appeal. Admittedly, prior to 1960 there was a partition amongst the 3 brothers, viz. Thammaiah, Linge Gowda and Bore Gowda. The land Survey No.86/1 of Chikkaballi, Mandya Taluk, along with other lands fell to the share of Bore Gowda. It is not disputed that on 18.11.1960 Bore Gowda mortgaged the land in question in favour of **F** Thammaiah for a period of 10 years. Though the mortgage period was upto 1970, on 27.8.1963 the said Bore Gowda redeemed the mortgage. It is the case of the original tenant Thammaiah that on 30.8.1963 Bore Gowda executed a lease deed in his favour in respect of 14 items of land including the land in question and since then the original tenant and after his death his legal heirs **G** are in possession and enjoyment of the land as the tenants. Appellant-Ramana, claimed to be the purchaser of the land from Karigowda in the year 1972. According to him, on 30.9.1963 the land in question was sold by Bore Gowda in favour of his father-in-law, Karigowda, and after about 9 years Karigowda sold the land to appellant and handed over possession also. It is also undisputed that, after the sale transaction in favour of appellant, as the **H** original tenant Thammaiah, resisted appellant from cultivating the land in

question on the ground that he is the tenant. Appellant-Ramanna filed a suit in O.S. No.26 of 1972 and during the pendency of the suit, as the provisions of the Act came to be amended and Civil Courts were barred from deciding the question of tenancy, the said suit was not finalised. As stated earlier, after coming into force the Act as amended by Karnataka Act No.1 of 1974, the original tenant, Thammaiah, filed application in Form No.7 claiming occupancy rights in respect of all the 14 items of lands including the land in question. Before the Land Tribunal statements of the parties were recorded and relying upon the agreement deed and the rent receipts the Tribunal proceeded to grant occupancy rights in favour of the original tenant Thammaiah by the order dated 2.8.1975. The said order was challenged by appellant before the High Court by way of a writ petition and the High Court remanded the matter to the Land Tribunal for fresh disposal in accordance with law. After the remand, once again the parties were given opportunity to adduce evidence and, after recording of such fresh evidence, the Tribunal again gave occupancy rights to the said Thammaiah. Aggrieved by the same, appellant approached the Appellate Authority. Even before the Appellate Authority opportunity to lead additional evidence was given to the parties and, after recording such evidence, the Appellate Authority doubting the veracity of the lease deed rejected the claim of the revision petitioners. Hence revision petition was filed before the High Court.

3. Stand before the High Court was that the Appellate Authority should have held that Thammaiah was a deemed tenant in terms of Section 4. It was also submitted merely because the alleged lease deed was not a registered document as required under law, the same cannot be treated to be a concocted document. On the basis of the said agreement 14 lands belonging to Boregowda were leased out to the tenant Thammaiah and except that land in dispute the remaining 13 lands which were given to the wife and daughter under a deed of settlement had been granted to the original tenant only on the basis of the said agreement.

4. Stand of the respondents before the High Court was that appellate authority dealt with each of the issue elaborately and in detail and the court exercising its revisional jurisdiction under Section 121-A of the Act should not interfere with the findings of fact arrived at by the Appellate Authority. It was pointed out that Karigowda the predecessor in title was in possession of the land in question was its owner since 13.9.1960 as was held by the appellate authority. Therefore no lease could have been created by Boregowda and after 1972 as there was a sale by Karigowda and as there was no

A subsisting relationship of landlord and tenant between himself and revision petitioner or between Karigowda and the revision petitioner since 1963. The Revision petitioner was not entitled for grant of occupancy right.

B 5. The High Court was of the view that there was no discussion about the genuineness of the lease deed. Finally, it was concluded that Karigowda was not examined either before the Tribunal or before the Appellate Authority by Ramanna, to substantiate his case that it was Karigowda who was the owner of the land from 1963 to 1972 from whom Ramanna purchased the land in the year 1972. Accordingly the order of the appellate authority was set aside.

C 6. In support of the appeal, learned counsel for the appellant submitted that the High Court's order is not supportable on facts and in law. The High Court has erroneously observed that there was no discussion about the genuineness of the lease deed. The admitted fact is that possession was taken at the time of redemption. The possession had given to Karigowda and D Karigowda had given it to the appellant. Basis of the claim was the lease-deed and the rent receipts. In the revenue records name of Thimmayya was not there.

E 7. Learned counsel for the respondent on the other hand supported the order of the High Court.

8. Few important dates need to be noted. In the year 1960 there was a partition and the ownership of disputed property Survey No.86/1 along with some other plots came to Boregowda. On 18.11.1960 Boregowda mortgaged the property with his own brother Thammaiah for a period of ten years.

F 9. The said property was redeemed on 27.8.1963. On 30.9.1963 Boregowda sold the property to his father-in-law Karigowda.

G 10. As noted above the admitted position is that possession was taken at the time of redemption, and the possession was given to Karigowda, and Karigowda had handed over possession to the appellant.

H 11. On 1.3.1974 the Act was enacted. It was specifically provided that the lands vest in the Government and tenants were given right to claim occupancy rights. Thammiah filed the petition before the land Tribunal and claimed to be the tenant under Karigowda. Interestingly Boregowda was not seen after the sale. The claim of tenancy was initially accepted. But the High

Court set aside the order and remanded the matter for fresh consideration. The Land Tribunal again granted claim of occupancy tenant.

12. Before the Appellate authority following points were formulated for determination:

(a) Whether the disputed land is fit for agriculture?

(b) Whether the disputed land was tenanted as on 1.3.1974 or immediately prior thereto?

(c) As on 1.3.1974 or immediately prior to that, whether the first respondent was a tenant cultivating the disputed land lawfully under Boregowda?

(d) Whether the order of the Land Tribunal is valid?

(e) What is the proper and suitable order that can be passed in this appeal?

13. As noted above basis of the claim was the lease- deed and the rent receipts. The Appellate Authority noted that there was no dispute that Thammiah was in possession of the disputed land. Appellant had purchased the land under sale- deed on 21.7.1972. In order to prove that he was lawfully cultivating the land relied Thammiah upon the Gutha Agreement dated 30.8.1963 and the Gutha receipts dated 2.3.1964, 28.2.1966, 18.1.1965, 6.3.1970, 2.3.1969 and 16.2.1968. The appellate authority noted that Thammaiah attempted to secure tenancy rights in the land that has gone to the share of his younger brother. It was, therefore, known to him that on 13.9.1963 Boregowda had sold the disputed land under a sale deed to his father in law Karigowda. Karigowda in his statement before the Land Tribunal made some significant statements. The Appellate Authority noted that after partition in the family Boregowda had mortgaged with possession of the land that came to his share for a period of 10 years by receiving a loan from Thammaiah. Before completion of the ten years period Boregowda repaid the mortgaged amount on 27.8.1963 and obtained back the possession. Boregowda discharged the mortgaged loan of Thammaiah on 27.8.1963. In his cross examination Thammaiah had admitted that after redeeming the mortgage for about 2 to 3 years he had not done guthige of the land and gave the same to his younger brother for a period of three years on concession. After he left the village continuing the guthige of the land again he himself was doing it.

A 14. The Appellate Authority referred to the statement in the cross examination and came to hold that he was not in possession of the land on 30.8.1963. The Pahari documents of the land were examined and it was noted that the possession and enjoyment of land by Thammaiah was not there from 30.9.1963 and the same was not established. In the Pahari documents of the land his name was not entered as tenant. On 30.9.1963 Boregowda sold the disputed land to his father in law. After such sale in the Kandayam Patta Book and Pahari documents of the disputed land name of the Karigowda the purchaser was entered. He had even paid the land tax to the State Government. Thammaiah who was the village Patel has himself written remarks in the Putta Book by receiving the land tax in the Kandayam Patta Book. He had signed for having received the land tax in the Kandayam. Contrary to what the High Court has observed, the Appellate Authority in detail has examined the question as to the genuineness of the lease deed. In the statement recorded by the Land Tribunal has been clearly admitted that the disputed land was being cultivated by the Koregowda and his son in law Boregowda jointly. Therefore, the Appellate Authority inferred that the sale deed was in force. D After examining the materials on record, the Appellate Authority recorded a categorical finding that the lease deed was not a genuine document and it was not a believable document. The Appellate Authority noted that Thammaiah was Patel of the village and he had full knowledge of the transaction. High Court erred in holding that there was no discussion on the factual aspect as to the genuineness of the document. No evidence was adduced to substantiate the claim of possession. It was also not shown as to when possession was taken from Korigowda. E

15. Above being the position the High Court should not have interfered with the factual findings recorded by the appellate authority while exercising jurisdiction under Section 121-A of the Act. The order of the High Court is not sustainable and is set aside. F

16. The appeal succeeds but in the circumstances without any order as to costs.

D.G.

Appeal allowed.