

CASE NO.:
Appeal (civil) 8060 of 2001

PETITIONER:
Gowdara Nanjappa

RESPONDENT:
Matada Bassaiah & Ors

DATE OF JUDGMENT: 15/02/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 8060 OF 2001

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of a learned Single Judge of the Karnataka High Court allowing the revision filed by Respondent No. 1 under Section 121(A) of the Karnataka Land Reforms Act, 1961 (in short the 'Act'). In the revision petition challenge was to the order passed by the Land Reforms Appellate Tribunal, Shimoga (in short the 'Appellate Tribunal'). By the impugned order before the High Court the Appellate Tribunal had set aside the order passed by the Land Tribunal, Shimoga Taluk (in short the 'Tribunal').

Background facts in a nutshell are as follows:

The lands in Sy. Nos. 3,6/2, 20 and 41/2 situated at Venkatapura village are the Inam lands endowed to Sri Kudli Rameshwara Devaru. In respect of the said lands, the applicants-Sri Subbaraya, Gowdara nanjappa, Matada Basaiah and Smt. Vrundamma filed applications for grant of occupancy rights. Subbaraya filed Form No. 1 claiming to be an Inamdar to the entire extent of 27 acres 29 guntas in the above survey-numbers. Gowdara Nanjappa also filed Form No.1 claiming 2 acres 6 guntas in Sy.No.41/2 as a tenant under the temple. The present petitioner Matada Basaiah also filed application for grant of occupancy right as tenant under Subbaraya in respect of the land measuring 2 acre 6 guntas. Another person Manjappa, husband of Vruddamma also filed an application for grant of occupancy right in Sy.No.41/2 to the extent of 1 acre 20.guntas. The Land Tribunal by its order dated 11.9.1981 granted occupancy right in favour of Gowdara Nanjappa to the extent of 2 acres 6 guntas and in respect of other applicants who are not parties in this petition. The said order was questioned by the present petitioner in W.P. No.17043/83 before this Court. This Court, in so far it relates to Sy.No.41/2 quashed the order of the Land Tribunal and remitted back the matter for fresh disposal in accordance with law. The Land Tribunal took up the matter for consideration by permitting the parties to lead evidence, recorded the evidence of Manjunatha, Subbaraya, Gowdara Nanjappa, Vrundamma and the evidence of the petitioner Matada

Basaiah. After considering the report and the entries made in the property and income of Muzrai Institutions maintained in the Taluk Office and also the entries found in the quit rent register, the Land Tribunal by its order dated 17.4.1986 granted occupancy rights in favour of Matada Basaiah to an extent of 2 acres 26 guntas and an extent of 1 acre 20 guntas in favour of Smt.Vrundamma. The order of the Land Tribunal was questioned by Gowdars Nanjappa, who is respondent No.1 in W.P. No.9587/86 before the High Court. The High Court by an order dated 29.9.1986 transmitted the records to the Appellate Authority, Shimoga in view of the amendment and the same was registered as LRA (W) No. 749/86 before the Land Reforms Appellate Authority. The Appellate Authority, by its order dated 27.10.1988 allowed the appeal of Gowdara Nanjappa setting aside the order of the Land Tribunal dated 17.4.1986 in so far as it relates to an extent of 2 acres 26 guntas which was conferred, in favour of Matada Basatah. Being aggrieved of the order of the Appellate Authority, the petitioner who is a rival tenant has come up with this revision.

2. Respondent No. 1's stand before the High Court was that Inamdar Subbaraya, Respondent No. 1 was a tenant in respect of land measuring 2 acres 26 guntas in Survey No. 41/2A. It was held that the Tribunal had rightly granted occupancy right in his favour. Stand of the present appellant before the High Court was that occupancy has been granted based on the entries in the R.T.C. extract and presumption arises regarding the possession and cultivation. Therefore, the Appellate Tribunal had rightly interfered with the order of the Tribunal. The High Court formulated two issues for consideration:

1. Whether the jurisdiction exercised by the Land Tribunal in so far as the adjudication of the matter involving the Inam lands prior to rendering of the judgment in Shri Kudli Sringeri Maha Samsthanam v. State of Karnataka reported in ILR 1992 Kar 1827 dated 24.4.1992 is bad and thereby the matter requires to be remanded to the Special Deputy Commissioner for adjudication?

2. Whether the Appellate Authority is justified in interfering with the finding of the Land Tribunal setting aside the grant of occupancy right in favour of the petitioner Matada Basaiah?

3. It appears that the High Court did not accept the presumptive value of the entries made in the R.T.C. extract but relied upon certain spot inspection made by the Tribunal.

4. Learned counsel for the appellant submits that the approach is clearly erroneous. It is pointed out that the appellant appears as a tenant in the RTC record.

5. Learned counsel for the respondents supported the High Court's order. Initially claim of respondent No. 1 was to be a lessee and an application was filed which was rejected. Subsequently he claimed that he was a tenant. The High Court relied only on Subbaraya's evidence. It failed to notice that initially the name of respondents and/or Subbaraya appeared in the R.T.C. There was no material before the High Court to by-pass the presumption to be drawn from the record of rights. The High Court appears to have placed emphasis on the spot inspection made by the Tribunal. Unfortunately the High Court overlooked the fact that the spot inspection was made in 1986 and such spot inspection did not

have a relevance to decide the basic issues. The revenue entries related to past period and were spread over a number of years and continued till appointed date. A finding recorded by the appellate authority has also relevance:

"\005..It is significant to note that the name of Subbaraya who claims himself to be the landlord of the suit land does not appear in the pahanies and RTC extracts of the suit land at any time either as owner or as a tenant. As discussed above, Rameswara Devaru Deity is admittedly Khatedar of the suit land and there is no material on record to show that the 4th respondent Subbaraya was authorized to lease the suit land on behalf of Rameswara Devaru Deity\005\005\005\005. Therefore the Land Tribunal was not justified in conferring the occupancy rights in favour of 3rd respondent matala Basaiah to an extent of 2 acres 26 guntas on the version of Subbaraya who himself had claimed occupancy rights of the suit land, and who had no authority to lease the lands on behalf of Rameswara Devaru Deity."

6. The High Court also failed to notice that Subbaraya himself has no right or title or interest in the land and his application for grant of occupancy right was rejected. There was no evidence of the respondent No.1 being a tenant in lawful possession of the land. The Pahani Extract proved tenancy of the appellant and possession as 1.3.1974 which is the relevant date for consideration.

7. Above being the position, the impugned order of the High Court is clearly unsustainable and is set aside, and the order passed by the Appellate Tribunal stands restored.

8. Appeal is allowed without any order as to costs.