

ITEM NO.1A

COURT NO.10

SECTION IVA

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS**

CIVIL APPEAL NO(s). 8334 OF 2002

V.G. SHANKARANARAYANA BHAT

Appellant (s)

VERSUS

GIRIJA (D) BY LRS. & ANR.

Respondent(s)

[HEARD BY HON'BLE TARUN CHATTERJEE AND HON'BLE V.S.SIRPURKAR, JJ.]

Date: 27/04/2009 This Appeal was called on for Judgment today.

For Appellant(s) Mr. Rajesh Mahale,Adv.

For Respondent(s) Mr. V.N. Raghupathy,Adv.

Mr. Sanjay R. Hegde ,Adv

Hon'ble Mr. Justice V.S.Sirpurkar pronounced the judgment of the Bench comprising Hon'ble Mr. Justice Tarun Chatterjee and His Lordship.

For the reasons given in the Reportable judgment which is placed on the File, the appeal is allowed. However, in the circumstances, there would be no orders as to the costs.

**(Parveen Kr. Chawla)
Court Master**

**(S.S.R.Krishna)
Court Master**

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8334 OF 2002

V.G. Shankaranarayana Bhat

.... Appellant

Versus

Girija (D) by LRs. & Anr.

.... Respondents

J U D G M E N T

V.S. SIRPURKAR, J.

1. A judgment passed by the Karnataka High Court in Land Reforms Review Petition, dismissing the same, confirming the order passed by the Land Reforms Appellate Authority, which in turn had confirmed the order passed by the Land Tribunal, Bantwal, is in challenge in the present Appeal. The said Revision was filed by the present appellants as the legal representatives of the original landlord.

2. One Govinda Bhat owned agricultural lands, which were leased in favour of one Kariyappa Gowda in 50s. Kariyappa Gowda cultivated the property as a tenant till his death. He had two wives, first being Akki Hengsu and through her, a daughter namely Laxmi Hengsu, and, second being Kali Hengsu and one son

Jinnappa Gowda through her. Admittedly, Kariyappa Gowda died in 1960. At that time, his daughter Laxmi was already married and was living with her husband. After Kariyappa Gowda died, the property was being cultivated by Jinnappa Gowda, with whom there was an agreement dated 5.11.1961 for tenancy. The total land, which was being cultivated was 2 acres 17 cents. In the year 1962, Jinnappa Gowda surrendered major portion of this property by way of a Surrender Deed to the landlord. Only the area of 1.6 acres was left with Jinnappa Gowda. It has come on record that Jinnappa Gowda represented to the landlord that he was not able to cultivate the land for over 3 years and he expressed his desire to surrender the property. Therefore, a petition was filed before the Munsif Court and after examining the parties, an order came to be passed on 5.3.1968, permitting Jinnappa Gowda to surrender the lands under Section 4 of Madras Cultivation and Tenant Protection Act, 1955. So far so good.

3. Laxmi, the step sister of Jinnappa Gowda, however, filed a Civil Suit being O.S. 63 of 1968 and obtained an injunction on 25.3.1968 against the petitioner (appellant herein), restraining the appellant from interfering with her possession. An appeal was filed against the order, granting injunction vide appeal in M.A. 34 of 1968 on the file of Court of Civil Judge, Mangalore, which came to be decided by the Learned Civil Judge, holding that Laxmi could not be dispossessed. As against that, Civil Revision Petition Nos. 1670 and 1671 of 1968 were filed before the High Court. The High Court, however, without going into the merits of the case, directed the Trial Court to dispose of the main suit itself without reversing the decision of the lower Court, which had passed the order on

merits. After the order of remand, the matter remained pending before the Munsif, who on application, appointed Laxmi as the Receiver. As against that order, the petitioner (appellant herein) preferred an appeal before the Court of Civil Judge, Mangalore, who remanded the matter on 9.1.1976 to the Land Tribunal, as the Tribunal had then come into existence owing to the 1974 Act. While the said suit was pending in the Court, Laxmi filed Form No. 7 application before the Land Tribunal, Bantwal in TNC No. 3216/74-75 against V.G. Shankaranarayana Bhat, who had succeeded the original landlord Govinda Bhat, who had expired, for conferral of occupancy rights. This suit was also transferred to the Land Tribunal, as the earlier application was pending for declaration and also for grant of occupancy right in respect of the land in question.

4. The Land Tribunal, after enquiry, by its order dated 23.11.1984, rejected the claim of the first respondent herein, however, on humanitarian grounds, conferred the occupancy rights upon Laxmi in respect of the land bearing Survey No. 46/2 measuring 26 cents. Her claim in respect of the remaining land was, however, rejected, that being Survey No. 43/2 measuring 80 cents. The appellant herein filed a Writ Petition No. 10592 of 1985 before the High Court. Laxmi also filed a Writ Petition being Writ petition No. 5104 of 1985 against the order dated 23.11.1984. Both the petitions were clubbed and the matter was remanded to the Land Reforms Appellate Authority. During the pendency before Land Reforms Appellate Authority, Laxmi died and, therefore, present respondent Girija was brought on record. The Land Reforms Appellate Authority, by its order dated 14.12.1989, set aside the order passed by the Land Tribunal in respect of the 80

cents in Survey No. 43/2, as also the land bearing Survey No. 46/2 measuring 0.26 cents, which land was conferred upon Laxmi on humanitarian grounds and conferred occupancy rights of both upon Girija. It is this order, which was challenged before the High Court. The High Court, however, confirmed the order of the Land Reforms Appellate Authority and that is how, the parties are before us.

5. Shri Krishna Moorthy, Learned Senior Counsel, appearing on behalf of the landlord (appellant) pointed out that the orders of the Land Tribunal, the Land Reforms Appellate Authority, as well as, the High Court are patently erroneous in law. The Learned Senior Counsel pointed out that admittedly, Jinnappa Gowda was the original tenant on the basis of an agreement dated 5.11.1961 with the original landlord Govinda Bhat after the death of Kariyappa Gowda. The Learned Senior Counsel further pointed out that this status of Jinnappa Gowda was never in dispute. He, therefore, pointed out that the High Court, as well as two authorities below, patently erred in holding Laxmi and after her, her daughter Girija to be the tenants. In fact, the possession of Laxmi, if any, could never have been viewed as that of the tenant. The Learned Senior Counsel pointed out that out of the original holding, the land excluding 1.6 acres was already surrendered and thereafter, even in respect of that land, i.e., 1.6 acres, there were valid surrender proceedings, which proceedings were never challenged by Laxmi and, therefore, the Land Tribunal, as also the Land Reforms Appellate Authority were in total error in going into the correctness or otherwise of the said surrender and writing a finding that the said surrender was brought about by fraud. The Learned Senior Counsel also pointed out that very strangely, Laxmi never joined Jinnappa Gowda as party

either before the Land Tribunal or even before the Civil Court, where she had chosen to go for seeking injunction against the landlord nor had she filed the said proceedings on behalf of Jinnappa Gowda. The Land Tribunal, as well as, the Land Reforms Appellate Authority also could not have proceeded to confer the tenancy rights upon Laxmi merely on the basis of some evidence that she was taking care of the agricultural lands in the absence of Jinnappa Gowda and further, without hearing Jinnappa Gowda. At any rate, the orders passed by the Land Tribunal, as well as, the Land Reforms Appellate Authority were suffering from jurisdictional error.

6. As against this, the Learned Counsel appearing on behalf of the respondents herein supported all the orders, contending that it was laxmi, who was throughout in possession and, therefore, she is bound to be conferred with the occupancy rights.

7. On these rival pleadings, it is to be decided as to whether Laxmi could have been conferred with the occupancy rights.

8. The legal scenario has to be borne in mind before we approach the question in any manner. The Karnataka Land Reforms Act, 1961 being Act 10 of 1962 came into force on 2.10.1965, i.e., the day, which was appointed by the State Government under Section 1(3) of the said Act. This Act was amended from time to time by Act Nos. 14 of 1965, 38 of 1966, 5 of 1967, 11 of 1968, 6 of 1970, 4 of 1972, 1 of 1974, 26 of 1974, 31 of 1974, 18 of 1976, 27 of 1976, 44 of 1976, 67 of 1976, 12 of 1977, 23 of 1977, 1 of 1979, 2 of 1980, 3 of 1982, 1 of 1983, 35 of

1985, 19 of 1986, 18 of 1990, 1 of 1991, 31 of 1991, 9 of 1992, 31 of 1995, 8 of 1996, 23 of 1998 & 34 of 1998 and the amendments were brought in by these aforementioned Acts. Before this Act came on the anvil, admittedly, parties were being governed by Madras Cultivation and Tenant Protection Act, 1955. By Section 142 of the 1961 Act, Madras Cultivation and Tenant Protection Act, 1955, as well as, the Madras Cultivating Tenants (Payment of Fair Rent) Act, 1956 repealed along with all other Acts like Bombay Tenancy Act, Hyderabad Tenancy Act, Mysore Tenancy Act etc. Kariyaapa Gowda was, therefore, a tenant under the provisions of Madras Cultivation and Tenant Protection Act, 1955. After his death, Jinnappa Gowda also became a tenant as per the agreement dated 5.11.1961 in between Jinnappa and the landlord Govinda Bhat. The surrender of tenancy, which took place on 5.3.1968 in between Jinnappa and Govinda Bhat was under the provisions of the Karnataka Land Reforms Act, 1961, since that Act had come on the anvil. The said surrender took place under Section 25 of that Act, as it existed in the year 1968. This Section has undergone a sea change, but we are not concerned with that change.

9. It is an admitted case that the said surrender took place on 5.3.1968 before the Munsif, Bantwal. It is further an admitted case that Jinnappa had executed a rent note in favour of the landlord on 5.11.1961. Now, the order passed, certifying the surrender of Jinnappa has never been challenged either by Laxmi or by Girija or for that matter, anybody and that order has remained intact. It is also an admitted case that after 5.11.1961, i.e., after the execution of rent note, it was Jinnappa, who was in cultivation of the land throughout. However, when

Laxmi asserted her right for the first time by way of a Civil Suit before Munsif, she claimed to be the direct tenant after Kariyappa Gowda. This was not possible because it is nobody's case that (1) Kariyappa Gowda had taken the tenancy on behalf of the whole family and (2) after him, the tenancy was inherited by Laxmi. If at all it was a heritable tenancy, then it would have been inherited by both Laxmi and Jinnappa Gowda. Instead, Laxmi claimed to be the sole tenant in respect of the whole property in the Civil Suit and very strangely, she got the injunction, which injunction dispute went right up to the High Court and which injunction dispute came in the lap of the Land Tribunal on account of the fact that by that time, the Tribunal had come into existence due to the passing of Karnataka Land Reforms Act, 1961. Unfortunately, the Land Tribunal, the Land Reforms Appellate Authority and the High Court have missed all these important factors. In its original order, the Land Tribunal has gone to the extent of rejecting the claim of Laxmi in respect of the major chunk of land of 80 cents and it also very strangely conferred the occupancy rights in respect of 26 cents of Laxmi, when Laxmi had no rights, whatsoever, and could not have been conferred with the rights on so-called humanitarian grounds. That order was clearly incorrect. However, it was correct insofar as the remaining land of 80 cents is concerned.

10. We have very carefully seen the order passed by the Land Reforms Appellate Authority, though the original order of the Land Tribunal was never made available to us. In our opinion, the Land Tribunal had correctly come to the conclusion that Laxmi had come into possession only on the strength of injunction granted by the Munsif Court. The Land Reforms Appellate Authority went on to

comment that the Land Tribunal had not taken into consideration the relationship between Jinnappa Gowda and the appellant and the evidence adduced by the appellant to prove that they were cultivating the disputed lands. In our opinion, even if all the letters are read in favour of Laxmi, still then, at the most, Laxmi's possession would be that of on behalf of Jinnappa Gowda. She cannot be said to be independently in possession of the concerned land, muchless in her capacity as a tenant. This fact has been completely missed by the Land Reforms Appellate Authority. The Land Reforms Appellate Authority again nowhere has considered the effect of surrender and the order dated 5.3.1968 remaining unchallenged throughout. That is another circumstance against Laxmi and, therefore, against her daughter Girija.

11. Again, the further circumstance that Jinnappa Gowda's status was that of the tenant on the basis of a rent note dated 5.11.1961 has been totally missed by the Land Reforms Appellate Authority, which was in fact correctly appreciated by the Land Tribunal. Jinnappa Gowda's this status of tenant was surrendered by him finally on order dated 5.3.1968 from the Land Tribunal and that order has remained intact till today.

12. Very strangely, the Land Reforms Appellate Authority has gone into the correctness of the order dated 5.3.1968 passed by the Tribunal, accepting the surrender and registering the surrender. We fail to see as to how the Land Reforms Appellate Authority could even have gone into the correctness of the order dated 5.3.1968. Nobody challenged the same, including Laxmi. The Land

Reforms Appellate Authority has also drifted into imagination in describing Jinnappa Gowda as a man, who was not wordly wise. The finding that Jinnappa was a man of low intelligence and, therefore, he surrendered the land, also appears to be a wholly incorrect finding based on no evidence. The Land Reforms Appellate Authority has gone to the extent of saying, mentioning in para 22 of its order, that Jinnappa was mentally unsound as per the appellant and that there was no doubt that Jinnappa was a puppet in the hands of the opponents and he has assigned his signatures as directed by the opponent and in this way he has executed documents as required by the opponents. All this has no basis, whatsoever. It cannot be forgotten that the surrender was done before a judicial authority as per the provisions of the Act and that surrender remained intact till today. In para 23, the Land Reforms Appellate Authority has also given a very strange finding that the land was tenanted to an undivided family and, therefore, all the family members had to jointly surrender the land and it was not permissible for one member of the family to surrender the land. In this, the Land Reforms Appellate Authority has completely ignored the fact that on 5.11.1961, i.e., after Kariyappa's death, there was an independent rent note, creating the tenancy in Jinnappa Gowda alone. The Land Reforms Appellate Authority has then further imagined that the rent note was executed by Jinnappa Gowda for the benefit of his family members and not in his individual capacity. We fail to follow as to wherefrom, the Land Reforms Appellate Authority has brought all these facts. Again, we are constrained to hold that the finding given by the Land Reforms Appellate Authority that the surrender was illegal, has no basis. Therefore, obviously, the

order of the Land Reforms Appellate Authority was totally incorrect.

13. Very unfortunately, the High Court also failed to see through all these illegalities, though the High Court has mentioned in its judgment, the factum of the surrender dated 5.3.1968 (wrongly under Section 4 of the Madras Cultivation and Tenant Protection Act, 1955). In fact, this surrender was not under Section 4, but should have been under Section 25 of the Karnataka Land Reforms Act, 1961 because by then, the Land Reforms Act had come on the legal anvil. Unfortunately, the High Court has also fallen in error in going on the factual aspects of the matter to the effect that Jinnappa Gowda used to go away for working and Laxmi used to look after the cultivation. Even if that was true, that could not ripen into any rights into Laxmi, much less the tenancy rights. The High Court has also gone on to comment on the unchallenged order dated 5.3.1968, which undoubtedly, had the effect of bringing the tenancy into end. At any rate, that order could not have been commented upon, particularly, when it was passed by Munsif and particularly, it was not in challenge in the High Court in any manner. The High Court has also very strangely written a finding that the money orders sent to the landlord were on the instructions of Laxmi and Jinnappa Gowda. In fact, the evidence of Seetharam Rai was clear that Jinnappa Gowda used to instruct him. If Jinnappa Gowda was in a position to instruct the lawyer, he could be said to be a man of low intelligence or a man of having no mental faculties, as was tried to be shown by Laxmi. The High Court in para 14 of its judgment, has actually approved of the wrong finding in appeal, examining the order of surrender without there being any jurisdiction of the same. That is wholly incorrect. In our

opinion, even if the finding arrived at by the High Court in para 16 of its judgment that Laxmi was cultivating the property is justified, that is not sufficient to confer upon her right of a tenant as her possession was not that of a tenant. Some imaginary statements had been made to the effect that this fact must be within the knowledge of the petitioner (appellant herein). The High Court has also fallen into error in holding that Kariyappa Gowda had taken the property on lease and after his death, Jinnappa was cultivating the property on behalf of the family members. We do not find any support to this strange finding in the record, at least Learned Counsel for the respondents was not able to justify this finding in any manner. Again, the High Court has fallen into total error in holding that the surrender order passed by the Court without Laxmi being impleaded is a nullity in the eye of law. It has absolutely no basis. The High Court was not called upon to decide the correctness of the surrender order.

14. From all this, it is clear that all the orders of the authorities are totally incorrect and would have to be set aside. It is, therefore, declared that Laxmi and thereafter, her daughter Girija do not have any rights and could not have been given the status of occupancy tenants. The appeal succeeds. However, in the circumstances, there would be no orders as to the costs.

.....J.
(Tarun Chatterjee)

.....J.
(V.S. Sirpurkar)

**New Delhi;
April 27, 2009.**