

Mudakappa vs Rudrappa And Others on 28 September, 1993

Equivalent citations: AIR1994SC1190, (1994)2SCC57, AIR 1994 SUPREME COURT 1190, 1994 (2) SCC 57, 1994 AIR SCW 508, (2008) 14 SCALE 546, (1994) 2 APLJ 7

Bench: K. Ramaswamy, N.P. Singh

JUDGMENT

1. The unsuccessful plaintiff-appellant laid the suit for perpetual injunction to restrain the respondent's uncles from interfering with his possession and enjoyment of the suit scheduled property. The trial court by its Judgment dated November 30, 1973 dismissed the suit. Pending appeal, the Karnataka Land Reforms (Amendment) Act 1 of 1974 came into force making extensive amendments to the Karnataka Land Reforms Act 1961 for short 'the Act'. Section 45A conferred jurisdiction on the Tribunal constituted under the Act to decide the question of tenancy and nature of the agricultural land and the Civil Court was directed under Section 133 to make a reference calling for a report from the Tribunal and on receipt thereof to decide the other questions in the suit. The learned District Judge by his order referred the matter to the Tribunal. The Tribunal found that the tenancy was in favour of the joint family and not to the appellant. Based thereon the District Judge dismissed the appeal. In the Misc. Second Appeal No. 97 of 1975 by Judgment dated February 23, 1978: reported in AIR 1978 Karnataka 136, the division bench of the Karnataka High Court dismissed the appeal. Thus this appeal by special leave.

2. The facts not in dispute are that the appellant's father and the respondents are brothers. His suit is based on his tenancy rights for permanent injunction to restrain the respondents from interfering with the alleged possession of the lands bearing R.S. Nos. 134 and 135 situated in Kittur Village and R.S. No. 109 situated in Mardur Village in Haveri Taluk of Sharwar District in State of Karnataka. The division bench held thus AIR 1978 Kant 136 at p. 140:

Whenever a statute confers a duty on an authority to decide a question and a corresponding right on an individual or individuals it has to be assumed that the statute, has, by necessary implication conferred on that authority the power to decide all issues which are incidental and ancillary to the main question to be decided. Otherwise the Tribunal will have to keep all the applications pending until such issues are decided by the Civil Court. In fact there is no procedure prescribed by the Act to refer such issues for the decision of the Civil Court. We do not think that it would be reasonable to hold that the Tribunal should await the decision of the Civil court on such issues, in view of Sub-section (5) of Section 48A, which requires the Tribunal to hold an enquiry into all rival claims made in respect of registration of the occupancy rights in respect of the agricultural lands before disposing of the applications made to it. We, therefore, hold that the Land Tribunal is competent to decide for the purpose of disposing of the applications under Section 48A the

question whether the lease-hold rights were held exclusively by the appellant or by the joint family consisting of the appellant and the respondents before the partition took place and thereafter by all of them as cotenants till the appointed day. It is its duty to do so under the Act. The said question could not therefore be decided by the Civil Court in view of Section 132 of the Act.

Section 44 of the Act in Chapter III reads thus:

44. Vesting of land in the State Government-(1) All lands held by or in the possession of tenants (including tenants against whom a decree or order for eviction or a certificate for resumption is made or issued) immediately prior to the date of commencement of the Amendment Act, other than lands held by them under leases permitted under Section 5, shall, with effect on and from the said date, stand transferred to and vest in the State Government, (2) Notwithstanding anything in any decree or order of or certificate issued by any court or authority directing or specifying the lands which may be resumed or in any contract, grant or other instrument or in any other law for the time being in force, with effect on and from the date of vesting and save as otherwise expressly provided in this Act, the following consequences shall ensue, namely

(a) all rights, title and interest vesting in the owners of such lands and other persons interest in such lands shall cease and be vested absolutely in the State Government free from all encumbrances;

3. Other Sub-sections are not relevant. Hence omitted.

4. Provided that the State Government shall not dispossess any person of any land in respect of which it considers, after such enquiry as may be prescribed that he is prima facie entitled to be registered as an occupant under this Chapter.

5. Section 45 reads thus: Tenants to be registered as occupants of land on certain conditions-(1) Subject to the provisions of the succeeding sections of this Chapter, every person who was a permanent tenant, protected tenant or other tenant or where a tenant has lawfully sub-let, such sub-tenant shall with effect on and from the date of vesting be entitled to be registered as an occupant in respect of the lands of which he was a permanent tenant, protected tenant or other tenant or sub-tenant before the date of vesting and which he has been cultivating personally.

6. Section 48A creates forum for enquiry which reads thus:

48.A. Enquiry by the Tribunal etc. (1) Every person entitled to be registered as an occupant under Section 45 may make an application to the Tribunal in this behalf. Every such application shall, save as provided in this Act, be made (before the expiry of a period of six months from the date of the commencement of Section 1 of the Karnataka Land Reforms (Amendment) Act, 1978).

(2) On receipt of the application, the Tribunal shall publish or cause to be published a public notice in the village in which the land is situated calling upon the landlord and all other persons having an interest in the land to appear before it on the date specified in the notice. The tribunal shall also issue individual notices to the persons mentioned in the application and also to such others as may appear to it to be interested in the land.

(Emphasis supplied) (3) to (4)...

(5) Where an objection is filed disputing the validity of the applicant's claim or setting up a rival claim, the Tribunal shall, after enquiry, determine, by order, the person entitled to be registered as occupant and pass orders accordingly:

Section 112(B) Duties of Tribunal-

(a) to make necessary verification or hold an enquiry (including local inspection) and pass orders in cases relating to registration of a tenant as occupant under Section 48A;

(b) to decide whether a person is a tenant or not;

(bb) to decide whether the land in respect of which application Under Section 48A is made or in respect of which any question of tenancy is raised or involved, is or is not an agricultural land;

(bbb) to decide questions referred to it under Section 133.

(Emphasis supplied) Section 133. Suits, Proceedings etc. involving questions required to be decided by the Tribunal-(1) Notwithstanding anything in any law for the time being in force-

(i) No Civil or Criminal Court or Officer or Authority shall, in any suit, case or proceedings concerning a land decide the question whether such land is or is not agricultural land and whether the person claiming to be in possession is or is not a tenant of the said land. from prior to 1st March, 1974;

(ii) Such Court or officer or Authority shall stay such suit or proceedings in so far as such question is concerned and refer the same to the Tribunal for decision;

(iii)...

(iv) The Tribunal shall decide the question referred to it under Clause (1) and communicate its decision to such Court, Officer or Authority. The decision of the Tribunal shall be final.

(Emphasis supplied) (2) Nothing in Sub-section (1) shall preclude the Civil or Criminal Court or the officer or authority from proceeding with the suit, case or proceedings in respect of any matter other

than that referred to in that Sub-section.

Section 2(3) "Agriculturist" means a person who cultivate the land personally;

...

Section 2(11) "to cultivate personally" means to cultivate land on one's own account-

(i) by one's own labour, or

(ii) by the labour of any member of one's family or;

(iii) by hired labour or by servants on wages payable in cash or kind, but not in crop share, under the personal supervision of oneself or by member of one's family;

Explanation I....

Explanation II-In the case of a joint family, the land shall be deemed to be cultivated personally, if it is cultivated by any member of such family;

(Emphasis supplied) Section 2(17) "Joint family" means in the case of persons governed by Hindu Law, an undivided Hindu family, and in the case of other persons, a group or unit the members of which are by custom joint in estate or residence;

Section 2(34) "tenant" means an agriculturist who cultivates personally the land he holds on lease from a landlord and includes-

(i) a person who is deemed to be a tenant under Section 4;

(ii) a person who was protected from eviction from any land by the Karnataka Tenants (Temporary Protection from Eviction) Act, 1961;

(iia) a person who cultivates personally any land on lease under a lease created contrary to the provisions of Section 5 and before the date of commencement of the Amendment Act;

(iii) a person who is a permanent tenant; and

(iv) a person who is a protected tenant.

Section 4. Persons to be deemed tenants-A person lawfully cultivating any land belonging to another person shall be deemed to be tenant if such land is not cultivated personally by the owner and if such person is not-

(a) a member of the owner's family, or

(b) a servant or a hired labourer, on wages payable in cash or kind but not in crop share cultivating the land under the personal supervision of the owner or any member of the owner's family, or

(c) a mortgagee in possession:

Provided that if upon an application made by the owner within one year from the appointed day-

(i) the Tribunal declares that such person is not a tenant and its decision is not reversed on appeal, or

(ii) the Tribunal refuses to make such declaration but its decision is reversed on appeal.

Such person shall not be deemed to be a tenant.

7. In Chapter III heading is conferment of ownership on tenants. A conspectus of the provision establishes the gamut of operation of the Act, namely, conferment of ownership of tenancy rights of the lands vested in the State Govt. The pre-existing right, title and interest of the landlord in relation to the lands in possession of the tenant, even against whom a decree or order for eviction or a certification for assumption was made or issued immediately prior to the date of the commencement of the Amendment Act other than the lands held by them under leases permitted under Section 5, with effect on and from the said date, i.e. March 1, 1974 stand transferred to and vested in the State Government. In other words the pre-existing relationship of the tenant with the landlord stood extinguished from the date of vesting in the State Govt. By operation of non obstante clause of Sub-section (2) of Section 44, the lands which were resumed by or in any contract, grant or other instrument of in any other law for the time being in force with effect on and from the date of vesting and save as otherwise expressly provided in the Act shall cease. The consequences enumerated there under shall ensue, namely, all rights, title and interest held by the owners of such lands and other persons interested in such lands shall cease and be vested absolutely in the State Govt, free from all encumbrances. Consequently the preexisting right, title or an interest of the owners of such lands shall cease and be vested absolutely in the State Government free from all encumbrances. Pending finalisation of the registration with the State Govt, of a tenant, his possession of the land is protected and he should not be dispossessed. Section 45 gives right to the tenant to be registered as an occupant of land on specified conditions enumerated in Section 45 and the provisions of the succeeding Chapter. Every tenant who is personally cultivating the land shall, with effect from the date of vesting, be entitled to be registered as an occupant in respect of the lands of which he was a permanent tenant, protected tenant or other tenant or sub-tenant before the date of vesting. The pre-existing tenancy rights with predecessor landlord have been extinguished and new rights have been created by the statute which would be ensued under the Act creating direct tenancy relationship with the State as a tenant. Section 48A constitutes the forum and enjoins it to enquire into the application registered by it. It should direct every person entitled to be registered as an occupant under Section 45 to make an application to the Tribunal in that behalf within the time specified there under. On receipt of such application, the Tribunal should publish or cause to be

published a public notice in the village in which the land is situated calling upon the landlord and all other persons having an interest in the land to appear before it on the specified date, personal notice shall be served on the persons named in the application or otherwise found to be entitled to be heard. By operation of Explanation II to Section 2(11) if the land is being cultivated by or on behalf of the joint family or by any one of the members of the joint family, it should be deemed that the Joint family is personally cultivating the land. The joint family is, therefore, the tenant and the land is lawfully in occupation of the joint family as a tenant. Sub-section (5) of Section 48A postulates that when an objection is filed disputing the validity of the applicant's claim or set up a rival claim, the Tribunal shall, after enquiry, determine, by order, the person entitled to be registered as tenant and pass orders accordingly. Therefore, when rival claims were set up for tenancy right and entitlement for registration, it is incumbent upon the Tribunal to enquire into the dispute and to decide the same in the prescribed manner. Thereon an order should accordingly be made by the Tribunal and it would become final. Thereby it is clear that the Act extinguishes the pre-existing right, title and interest of the land owners as well as those who were inducted into possession by the erstwhile land holders. The new rights have been created in the Act itself in favour of the tenants in personal cultivation to claim registration as tenants so as to continue to enjoy the occupancy rights as a tenant as enumerated under Section 45. A forum was created and the forum is enjoined to enquire into not only the nature of the land but also the entitlement for registration as a tenant. When inter se rival claims for tenancy rights have been set up, it has been empowered with jurisdiction to decide that question as to who is the tenant in possession of the land prior to the date of vesting and entitled to be registered as a tenant with the State Govt, and its decision shall be final. The Civil Court's jurisdiction under Section 9 of C.P.C. by necessary implication, therefore, stood excluded.

8. It is seen that the words 'tenant', 'the Tribunal', and 'the joint family' have been defined under the Act. If one of the members of the family cultivates the land, it is for and on behalf of the joint family. Under these circumstances, pending the suit, when the question arose whether the appellant or Joint family is the tenant, that question should be decided by the Tribunal alone under Section 48A read with Section 133 and not by the Civil Court. It is needless to mention that when the Tribunal constituted under the Act has been invested with the power and jurisdiction to determine the rival claims, it should record the evidence and decide the matter so that its correctness could be tested either in an appeal or by judicial review under Article 226 or under Article 227, as the case may be. But that cannot, by necessary implication, be concluded that when rival claims are made for tenancy rights, the jurisdiction of the Tribunal is ousted or its decision is subject of the decision once over by the Civil Court. It is clear from Section 48A(5) and Section 112B(bbb) read with Section 133, that the decision of the Tribunal is final Under Section 133(iii). The Civil Court has power only to decide other issues. It is, therefore, difficult to accept the contention that the rival claims for tenancy rights or the nature of the tenancy are exclusively left to be dealt with by the Civil Court.

9. We entirely agree that the division bench laid down the law correctly. It was followed by another division bench in *Guruvappa v. Manjappu Hengsu*. No doubt another division bench in *Appi Belchadthi v. Sheshi Belchadthi*, (1982) 2 Kar LJ 565 had taken a different view and held that the Civil Court has jurisdiction to decide the question regarding the tenancy on behalf of the Joint family and the Tribunal has no jurisdiction to go into the question. In the light of above, we hold

that law laid in Appi Belchandthi's case is not a good law. The view we have taken is also consistent with the law laid down by this Court in Noor Mohd. Khan Ghouse Khan Soudagar v. Fakirappa Bharmappa Machenaballi arose in execution. Therein the question though was not directly in issue but this Court had held that when exclusive jurisdiction has been conferred on the Tribunal to decide the questions arising under the Act, Civil Court has no jurisdiction and the question has to be decided only by the Tribunal constituted under the Act.

10. There is yet another ground on which the appellant is not entitled to the relief. Pending the adjudication, rival claims were admittedly made under Section 48A(5) and the Tribunal had gone independently into the question and reiterated the same view as held in the enquiry under Section 133. Against that decision, the appellant filed Writ Petition No. 4694 of 1977 which was pending when the second appeal was decided by the division bench. We are informed that subsequently it was disposed of upholding the view of the Tribunal and it became final. Therefore, having been allowed to become final, it operates as resjudicata. In either view, the appeal does not warrant any interference. It is accordingly dismissed. The parties are directed to bear their own costs.