

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO.6286/2009

R. Ravindra Reddy & Ors. .. Petitioners

Vs.

H. Ramaiah Reddy & Ors. .. Respondents

J U D G M E N T

ALTAMAS KABIR, J.

1. One Dodda Appanna Reddy owned vast properties in Halasahalli Thippasandra Village, Sarjapura Hobli, Anekal Taluk, Bangalore Urban District. He died in 1968 leaving behind his only son, Pilla Reddy, and grandson, H. Ramaiah Reddy, the Respondent No.1 herein, to succeed to his estate.

The petitioners herein are the sons of H. Ramaiah Reddy.

2. After Appanna Reddy's death Pilla Reddy and H. Ramaiah Reddy constituted a joint family in respect of the ancestral properties and were in joint possession and enjoyment of the various properties, including the suit schedule properties.

3. In 1972, there was a partition of the properties between Pilla Reddy and his son, H. Ramaiah Reddy, in respect of the joint family and ancestral properties. One Annaiah Reddy, a professional document writer at the Sub-Registrar's office at Anekal Taluk, was an attesting witness to the registered partition deed. Pilla Reddy executed two Wills, both scribed by Annaiah Reddy, in 1972 and in 1979. The said Annaiah Reddy filed an application on 30th December, 1974, for grant of tenancy rights in respect of the suit schedule lands under Section 48 of the Karnataka Land

Reforms Act, 1961, hereinafter referred to as "the 1961 Act", claiming occupancy rights on the ground that he had been cultivating the suit lands. Only Pilla Reddy was impleaded as a party to the proceedings, although, the properties were said to be ancestral properties. It appears that on 11th December, 1975, the tenancy rights of the lands in question were recorded in the name of Annaiah Reddy.

4. In 1986, one Sunkamma claiming to be the second wife of Pilla Reddy, filed a partition suit after the death of Pilla Reddy, seeking partition and separate possession of his various properties. In 1996, Annaiah Reddy sold some of the lands in favour of Respondent Nos.2 to 5 herein and as contended by the petitioners, they had no knowledge of the grant of occupancy rights in favour of Annaiah Reddy. The said matter ultimately reached this Court by way of Civil Appeal No.1348 of 2001

preferred by H. Ramaiah Reddy. During the pendency of the said appeal, H. Ramaiah Reddy and Sunkamma entered into a compromise which was recorded and the appeal was disposed of by an order dated 26th October, 2004. Inasmuch as, the Respondent Nos.2 to 5 tried to disturb the possession of the petitioners on the strength of their purported purchase of the suit lands from Annaiah Reddy, the petitioners filed the above-mentioned suit, being No.1457/2005, in the Court of the Principal Civil Judge (Senior Division), Bangalore Rural District at Bangalore, *inter alia*, for a declaration that they were coparceners of the undivided Hindu Joint Family of late Dodda Appanna Reddy and for partition of the scheduled properties by metes and bounds and to put the plaintiffs in separate possession of their legitimate 1/4th share each in the schedule properties. They also prayed for a declaration that the order dated 11th December, 1975, passed by the Land Tribunal, Anekal Taluk,

was illegal and not binding on the plaintiffs and their inheritance right and title to the schedule properties. A further declaration was sought for that the sale deeds executed by Annaiah Reddy in favour of the Defendant Nos.2 to 4 were illegal and not binding on the petitioners. Along with the said relief, the petitioners also prayed for a mandatory injunction to direct the Tahsildar, Anekal Taluk, to effect the mutation and revenue entries in respect of the schedule properties in the joint names of the petitioners and the first defendant. Consequential reliefs were also prayed for.

5. In the said suit, the petitioners prayed for granting ad-interim injunction against the respondents, for the purpose of deciding the suit. The Trial Court formulated 11 issues and one additional issue. Of the said 12 issues, the 6th issue was 'Whether the suit was barred by limitation?' and the additional issue was 'Whether

the suit was maintainable in view of Section 132(2) of the Karnataka Land Reforms Act?'. .

6. The Trial Court decided to hear the said two issues as preliminary issues. After hearing the parties, the Trial Court answered issue No.6 in the affirmative and additional issue No.1 in the negative and held that the suit was barred by limitation and was also not maintainable in view of the bar of Section 132(2) of the Karnataka Land Reforms Act, 1961. In view of its said findings, the Trial Court dismissed the plaintiff's suit. Aggrieved by the said judgment and decree of the Trial Court, the petitioners preferred the Regular First Appeal No.845 of 2006 (PAR) before the Karnataka High Court at Bangalore. The High Court also dismissed the appeal endorsing the view taken by the Trial Court that the petitioners' suit was clearly barred by limitation and also by virtue of

Section 132(2) of the 1961 Act and that Civil Court had no jurisdiction to entertain and try the same.

7. It is against the said judgment and order of the Karnataka High Court in RFA No.845/2006 (PAR) that the instant appeal has been filed.

8. On behalf of the petitioners it was urged by Mr. Raju Ramchandran, learned Senior Advocate, that since the petitioners were third parties to the proceedings before the Land Tribunal, the order passed therein did not bind them and they were separately entitled to file the suit for partition notwithstanding the orders of the Land Tribunal. It was also submitted that since the proceedings before the Land Tribunal were vitiated by fraud and collusion, the bar under Section 132(2) of the 1961 Act would not apply to the facts of the instant case and as such the Trial Court was not justified in holding that the suit was barred under the said provisions. According to the petitioners, since the

suit had been brought within a period of 3 years from the date of knowledge of the order of the Land Tribunal and the sale transaction, it was not barred by limitation and the Trial Court erred in dismissing the same on the ground of limitation.

9. Elaborating on his submissions, Mr. Ramchandran submitted that in order to be recognized and recorded as an occupant under Section 45 of the 1961 Act, the person concerned would be entitled to make an application to the Tribunal constituted under Section 48 of the Act and every such application would have to be made before the expiry of the period of 6 months from the date of commencement of Section (1) of the Karnataka Land Reforms (Amendment) Act, 1978. Mr. Ramchandran contended that the inquiry by the Tribunal contemplated under Section 48-A(5) had necessarily to be confined to the determination of the claim of tenancy of the applicant and in the

event such a question arose during the pendency of a civil or criminal proceeding, no civil or criminal Court or officer would be entitled to decide the question whether such land was agricultural land or not and whether the person claiming to be in possession is or is not the tenant of the suit land from prior to 1st March, 1974, in view of Section 133(1)(i) of the aforesaid Act.

10. Reference was also made to Rule 17 of the Karnataka Land Reforms Rules, 1977 (hereinafter referred to as the '1974 Rules') which prescribes the procedure to be followed by the Tribunal in respect of a summary inquiry under Section 34 of the 1961 Act. It was urged that since the procedure was summary in nature, questions relating to fraud or the validity of a concession made by the petitioners' grand-father could only be gone into by a Civil Court and not in the summary proceedings

before the Tribunal. Mr. Ramchandran submitted that it would be evident from the frame of the suit that no such question, as contemplated under Section 48-A, was involved in the suit which was essentially one for declaration that the petitioners were coparceners of the undivided Hindu Joint Family of late Dodda Appanna Reddy and partition of the scheduled property by metes and bounds and to put the plaintiff in separate possession of their legitimate $1/4^{\text{th}}$ share each in the scheduled properties. A further prayer was made to declare that the order dated 11th December, 1975, passed by the Land Tribunal, Anekal Taluk, in Case No.LRF/A.T.C./154/75-76, was illegal and not binding on the petitioners and did not affect their inheritance rights and title to the scheduled properties. A further declaration was sought that the sale deeds executed by Late Annaiah Reddy in favour of the defendant Nos.2 to 4 was a sham transaction and not binding on the petitioners.

Mr. Ramchandran submitted that the Tribunal was not competent to determine the said questions which could only be decided by the Civil Court.

11. In support of his aforesaid submissions, Mr. Ramchandran firstly referred to the decision of this Court in Saraswati & Ors. vs. Lachanna [(1994) 1 SCC 611], in which a similar provision in the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, where the Civil Court's jurisdiction had been barred, fell for consideration and it was held that a suit relating to redemption of usufructuary mortgage filed in the Civil Court was not barred and was maintainable, having regard to the provisions of Section 9 of the Code of Civil Procedure. This Court held that bar on the power of the Civil Court to entertain a suit could not be inferred with, where the statute did not create a right or after creating a right did

not provide a forum for adjudication of any dispute arising out of such right.

12. Mr. Ramchandran also referred to the decision of this Court in the case of Shiv Kumar Chadha vs. Municipal Corporation of Delhi & Ors. [(1993) 3 SCC 161], where the same principle was reiterated and it was held that the Court's jurisdiction to go into the question as to whether the order was a nullity being vitiated by jurisdictional error was not barred.

13. Reference was also made to the decision of this Court in the case of Swamy Atmananda & Ors. vs. Sri Ramakrishna Tapovanam & Ors. [(2005) 10 SCC 51], where a dispute over title under the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, was claimed to be barred under Section 53 of the Act. This Court held that such a dispute was not one that was required to be decided under the provisions of the aforesaid Act, and, accordingly,

the jurisdiction of the Civil Court in terms of Section 9 of the Civil Procedure was not excluded. It was emphasized that the ouster of the Civil Court's jurisdiction was not to be readily inferred.

14. Mr. Ramchandran lastly referred to the decision of this Court in Sudhir G. Angur & Ors. vs. M. Sanjeev & Ors. [2006 (1) SCC 141], wherein, while considering the provisions of the Mysore Religious and Charitable Institutions Act, 1927, this Court held that the jurisdiction of the Civil Court in regard to matters containing serious allegations of forgery, fraud and diversion of trust properties, could not be inquired into in a summary manner and could only be gone into by a Court.

15. On the question of limitation, Mr. Ramchandran submitted that the High Court erred in deciding the question of limitation without considering the

fraudulent nature of the consent said to have been given by Pilla Reddy, although, he had no independent right or title over the property to give consent for granting occupancy rights in favour of Annaiah Reddy. Mr. Ramchandran submitted that the High Court erred in holding that the suit was barred by limitation without taking evidence in that regard. In support of his aforesaid submission, Mr. Ramchandran referred to the decision of this Court in Jatinder Singh & Anr. vs. Mehar Singh & Ors. [AIR 2009 SC 354], in which this Court set aside the decision of the High Court for having failed to take notice of an application filed by the Appellant therein under Order 41 Rule 27 CPC while deciding the second appeal. This Court held that when such an application was pending, it was the duty of the High Court to deal with the same on merits and not having been done so, there was no other alternative, but to set aside the judgment of the High Court and to remit

the appeal for a fresh decision in the second appeal after taking into consideration the application under Order 41 Rule 27 CPC.

16. In the same context, reference was also made to a subsequent decision of this Court in Balawwa & Anr. vs. Hasanabi & Ors. [(2000) 9 SCC 272], in which the question of ouster of the Civil Court's jurisdiction fell for consideration in view of the Karnataka Land Reforms Act, 1961. This Court held that the jurisdiction of the Civil Court is ousted only in respect of such reliefs as could be granted by the Special Tribunal under the Special Statute but in other respects the jurisdiction of the Civil Court was not ousted.

17. Mr. Ramchandran submitted that the preliminary issue relating to the bar of jurisdiction of the Civil Court, as envisaged under Section 133 (2) of the 1961 Act, could not have been decided without taking evidence as to the character of the lands in

question. Mr. Ramchandran submitted that the order of the High Court was not capable of being entertained and was liable to be set aside.

18. On the other hand, appearing for the Respondent No.1, Mr. Kailash Vasudev, learned Senior Advocate, pointed out from the plaint of OS No.1457 of 2005, filed by R. Ravindra Reddy in the Court of Principal Civil Judge (Senior Division), Bangalore Rural District, Bangalore, that a fraud had been perpetrated by the said Annaiah Reddy only to deprive the plaintiffs of their right and share in the scheduled properties. Mr. Vasudev pointed out that in the same breath it had also been admitted that Pilla Reddy had conceded grant of tenancy rights in favour of late Annaiah Reddy, though without knowledge and consent of the plaintiffs. Mr. Vasudev submitted that the question of obtaining the consent of the plaintiffs by their grandfather, Pilla Reddy, for grant of tenancy

rights in favour of Annaiah Reddy, did not arise since he was holding the tenancy rights in respect of the said land.

19. Mr. Vasudev also referred to paragraph 16 of the plaint where it was stated that the cause of action for the suit arose in January 2005 as the plaintiffs/respondents were continuously demanding partition and separate possession of their share in the scheduled properties and the petitioners herein failed to effect partition, but the other respondents were continuing to make attempts to trespass/interfere with and to disturb the Respondent No.1's possession and enjoyment of the scheduled properties.

20. Mr. Vasudev then brought to our notice the proceedings before the Land Tribunal, Bangalore District, Anekal Taluk, in Case No.LRF/A.T.C./154/75-76 dated 11th December, 1975, in which the Petitioner was shown as M. Annaiah Reddy and H.

Pilla Reddy was shown as the Respondent. In the proceedings under Section 48-A of the 1961 Act, the application filed by M. Annaiah Reddy was disposed of by the following order :-

"All the above mentioned Sy. Nos. lands are situated at Halasahalli Thippasasndra Village, Sarjapura Hobli. The petitioner claims occupancy right in the above mentioned Sy. Nos. and produced the order copy dated 30.12.74. The date for enquiry was fixed on 11.12.75 and on the same day the enquiry was conducted and the respondent agreed that occupancy rights claimed by the petitioner in the above said Sy. Nos. Therefore all the members of the Tribunal have unanimously accepted the contention of the petitioner and the respondent and resolved to grant occupancy rights in favour of petitioner to the extent of lands in the above-said Sy. Nos. as per possession."

21. Mr. Vasudev submitted that it would be amply clear from the said order that Pilla Reddy had agreed to the claim of occupancy rights by M. Annaiah Reddy. Furthermore, such order had never been questioned by H. Pilla Reddy as being fraudulent or having been obtained by fraudulent means.

22. Mr. Vasudev referred to the decision of this Court in K.D. Sharma vs. Steel Authority of India Ltd. [(2008) 12 SCC 481], in which the issue relating to fraud perpetrated on Court was considered in detail and it was held that fraud practised on the Court would vitiate all judicial acts, since fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another.

23. Mr. Vasudev also referred to the decision of this Court in Mudakappa vs. Rudrappa [AIR 1994 SC 1190], in which this Court held that the Tribunal under the Karnataka Land Reforms Act was entitled to decide the question as to whether the joint family or one of its members was a tenant in respect of the land in question and that such decision was subject to review under Articles 226 and 227 of the Constitution.

24. Mr. Vasudev submitted that since the preliminary objections made on behalf of the Respondent No.1 herein had been duly accepted relating to the maintainability of the suit, on account of the bar imposed under Section 133(1)(i) and (2) of the 1961 Act and the bar of limitation, no interference was called for with the impugned judgment of the High Court.

25. As has been mentioned hereinbefore, out of 11 issues and the additional issue formulated by the Trial Court, issue No.6 and the additional issue relating to the bar of limitation and maintainability in view of Section 132(2) of the 1961 Act, were taken up for consideration as preliminary issues. In fact, in view of the decision on the said two issues, no other issue was either taken up for consideration or decided. Our inquiry in this petition is, therefore, confined to the said two issues alone.

26. The Trial Court answered issue No.6 in the affirmative and additional issue No.1 in the negative holding that the suit was barred by limitation and was not maintainable in view of the bar of Section 132(2) of the 1961 Act. We have considered the submissions made on behalf of the respective parties in respect of the two issues and we agree with the views expressed by the Trial Court as also the High Court on the said two issues.

27. As far as the question of limitation is concerned, the order of the Land Tribunal, Anekal, was passed on 11th December, 1975, whereas the suit was filed by the Petitioners herein in 2005 seeking declaration, partition and permanent injunction in respect of the properties which were the subject matter of the order of the Tribunal. An attempt has been made to bring the said suit within the period of limitation by indicating that the

Respondent Nos.2 to 5 had tried to disturb the possession of the Petitioners during the year 2004-05 on the ground of their alleged purchase of the suit lands from Annaiah Reddy. It was sought to be urged that Pilla Reddy had admitted the claim of the Respondents on having acquired occupancy rights before the Tribunal, without the knowledge and consent of the Petitioners. Both the Trial Court, as well as the High Court, have dealt with this aspect of the matter and have found that it was on record that notice of the proceedings before the Land Tribunal had been given in the village in respect of the application filed by Annaiah Reddy. It is also on record that the father of the Petitioners was quite aware of the orders of the Land Tribunal as in OS No.75 of 1986 he had taken a specific stand that one of the suit properties, namely, Survey No.46, is a tenanted property, and that the Land Tribunal, Anekal, had conferred occupancy rights in favour of M. Annaiah Reddy.

The High Court has observed that inspite of the same, the father of the Petitioners did not question the correctness of the order of the Tribunal. It is on that basis that the Courts below held that the Petitioners had knowledge of the concession made by Pilla Reddy in favour of Annaiah Reddy and negated their contention that they were not aware of the same till they signed the compromise petition before this Court in the appeal arising out of OS No.75 of 1986.

28. We are, therefore, unable to accept Mr. Ramchandran's submissions that the cause of action for the suit arose only in 2004-05 when the Respondent Nos.2 to 5 purportedly attempted to disturb the possession of the Petitioners.

29. As far as the second issue is concerned, although ouster of jurisdiction of the Courts is not to be readily inferred, it is quite clear from the provisions of Sections 132(2) and 133(1)(i) of

the 1961 Act that the jurisdiction of the Civil Court in matters to be decided by the Tribunal, and to question a decision of the Tribunal stands ousted by Section 132 of the 1961 Act which provides as follows :-

"132. Bar of jurisdiction - (1) No civil court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Deputy Commissioner, an officer authorized under sub-section (1) of Section 77, the Assistant Commissioner, the prescribed authority under Section 83, the Tribunal, the Tehsildar, the Karnataka Appellate Tribunal or the State Government in exercise of their powers of control.

(2) No order of the Deputy Commissioner, an officer authorized under sub-section (1) of Section 77, the Assistant Commissioner, the prescribed authority under Section 83, the Tribunal, the Tehsildar, the Karnataka Appellate Tribunal or the State Government made under this Act shall be questioned in any civil or criminal court."

Furthermore, Section 133(1)(i) and (2) of the Act read as follows :-

"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 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) x x x

(ii) x x x

(iii) x x x

(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."

30. It is clear from the above that the jurisdiction of the Civil or Criminal Court or Officer or Authority stood ousted in matters where a decision had to be taken as to whether the land in question was agricultural land or not and whether the person claiming to be in possession is or is not a tenant of the said land from prior to

1st April, 1974. In the instant case, the question as to whether Annaiah Reddy was an occupancy tenant or not and whether Pilla Reddy had given his consent to such claim is in the domain of the Land Tribunal and it has been correctly held by the Courts below that the Civil Court had no jurisdiction to decide such a question.

31. As far as fraud is concerned, it is no doubt true, as submitted by Mr. Ramchandran, that fraud vitiates all actions taken pursuant thereto and in Lord Denning's words 'fraud unravels everything'. However, in the instant case, there is nothing on record to suggest that Annaiah Reddy committed any fraud on Pilla Reddy, who willingly accepted the claim of Annaiah Reddy to occupancy rights over the land in question.

32. In that view of the matter, we see no reason to interfere with the judgment and order of the High

Court impugned in these proceedings and the Special Leave Petition is, accordingly, dismissed.

33. There will, however, be no order as to costs.

J.
(ALTAMAS KABIR)

J.
(CYRIAC JOSEPH)

New Delhi
Dated:17.02.2010