(2022) 09 TEL CK 0027

High Court For The State Of Telangana:: At Hyderabad

Case No: Civil Revision Petition No. 523 Of 2021

Kore Rajappa Died Per Lrs		APPELLANT
	Vs	
M. Mallamma		RESPONDENT

Date of Decision: Sept. 6, 2022

Acts Referred:

- Andhra Pradesh (Telangana Area) Tenancy And Agricultural Lands Act, 1950 - Section 19, 19(1)(a), 19(3), 32(2), 38E

Hon'ble Judges: P.Sree Sudha, J

Bench: Single Bench

Advocate: Anantha Chary Kurella

Final Decision: Dismissed

Judgement

1. This revision is directed against the order dated 28.08.2020 passed in Tenancy Appeal No.F1/07/2008 on the file of the Joint Collector,

Nagarkurnool, whereby the appeal filed by the revision petitioners-appellants herein was dismissed while confirming the order dated 28.07.1988

passed by the Mandal Revenue Officer, Veldanda.

2. One Kore Rajappa filed an application dated 27.04.1988 before the Mandal Revenue Officer, Veldanda, under Section 32(2) of A.P. (TA)

Agricultural Lands Act, 1950 (for short, Ã¢â‚¬Ëœthe Act of 1950Ã¢â‚¬â„¢) for possession of land in Sy.No.180 in an extent of Ac.5.28 guntas and in Sy.No182

in an extent of Ac.6.32 guntas situated within the limits of Choudharpally, H/o. Cherkur Village of Veldanda Mandal, on the ground that he is a protected tenant. The Mandal Revenue Officer rejected the said restoration application in File No.A/508/1988 dated 28.07.1988. The legal heirs of

Kore Rajappa questioned the said judgment before the Joint Collector, Mahaboobnagar, in Appeal No.F1/07/2008 and the same was dismissed by

order dated 28.08.2020. Aggrieved by the said order, this revision is preferred.

3. Heard the learned counsel appearing for the revision petitioners and the learned counsel appearing for the respondents. Perused the record.

4. The basis for the entire litigation is the judgment dated 28.07.1988 of the Mandal Revenue Officer, Veldanda, in File No.A/508/88. Basing on the

letter of Revenue Divisional Officer, Mahaboobnagar, bearing L.No.K/1221/88 dated 27.04.1988 to restore the possession of the lands in favour of

Kore Rajappa. Mandal Revenue Officer verified the records and stated that the P.T.Register of 1950 in column No.13 the actual cultivators name in

the pahani of 1950 is found to be NIL. M.Mallamma wife of Buchappa in a petition dated 02.05.1998 stated that she is the land holder of Sy.Nos.180,

181 and 182. In the tenancy register the name of Kore Rajappa was erroneously written including K.Veerabasappa, K.Siddiramappa, K.Shankarappa

sons of Ramappa and during implementation of Section 38-E of the Act, 1950 the ownership certificates were given to them, she approached the

Tahsildar and after verification of the records he held that the ownership certificates issued in their favour are tenable and directed them to return the

same. The Additional Revenue Divisional Officer, Mahaboobnagar, in a judgment dated 04.09.1975 held that the land holders are having less than two

family holdings. Kore Rajappa also filed O.S.No.63 of 1980 on the file of the District Munsiff, Kalwakurthy, and it was dismissed. Aggrieved the

same he preferred A.S.No.103 of 1980 on the file of the Additional District Judge, Mahaboobnagar, and the appellate Court set aside the order of the

trial Court. Later S.A.No.142 of 1984 was preferred before this Court and it was dismissed on 15.10.1987. The statement of Kore Rajappa was

recorded by the Mandal Revenue Officer on 06.06.1988 in the presence of Godugu Rajaiah and Hanumanth Reddy in which he admitted that his name was not recorded as actual cultivator in 1950, 1954 and 1952 and even subsequent years but the Additional Revenue Divisional Officer granted

ownership certificate to an extent of Ac.25.00 guntas. Mallamma approached the Land Reforms Tribunal and it held that she is not attracted by the

provisions of Section 38-E of the Act, 1950 as her holding is lesser than two family holdings. When Kore Rajappa was examined before the appellate

Court, he admitted that in Sy.Nos.180 and 182 Buchappa and Chinna Basappa were having equal rights in the suit land and the ownership certificate

issued to the petitioner therein is not applicable and that he and other protected tenants cannot claim rights in the suit land. He also admitted that the

enquiry conducted in the Tahsildar Office in respect of the wrong entries made in the phanies from 1975-76 to 1977-78 and a warning was given to

Patwari and the entries were also rectified. The Mandal Revenue Officer held that the oral surrender made by Kore Rajappa was before 04.02.1954

and it was admitted by him in his sworn statement on 06.06.1988 in the presence of the witnesses. As per Gazette Extraordinary No.29 dated

04.02.1954, the oral surrender before the said date was legal and accordingly dismissed the application. Aggrieved the said order, Kore Rajappa

preferred an appeal viz., Appeal No.B7/23/88 before the Joint Collector at Mahaboobnagar. By order dated 06.01.1992 the Joint Collector held that

after careful perusal of the entries in the pahanies the second respondent-Mallamma therein was never in possession of the suit lands prior to 1954-55

and the said lands were under the occupation of the appellants in the year 1954 and the pahanies of the Mandal Revenue Officer is not correct. The

tenant can claim his right to possession at any time as long as the tenancy rights are not legally extinguished and allowed the appeal. Aggrieved by the

said order the second respondent-Mallamma preferred C.R.P.No.757 of 1992 before this Court and this Court by an order dated 25.01.1996

remanded the matter. Again the Joint Collector, Mahaboobnagar, in File No.F1/4/1996 dated 23.07.2005 observed that the name of Kore Rajappa was found in cultivation column of pahanies pertaining to 1955-56, 1956-57 and 1957-58 in respect of Sy.No.182 and in pahani of 1966-67 in respect of

Sy.No.180 and his name is shown as cultivator during the years 1975-76, 1976-77 and 1977-78 in respect of both the suit lands and thus he was in

possession of the suit lands up to 1977-78. Surrender of tenancy should be in writing as per Section 19(3) of the Act, 1950. The oral surrender of the

land by the protected tenant is not proved and thus directed the Mandal Revenue Officer, Veldanda, to hand over possession to the legal heirs of Kore

Rajappa. Again C.R.P.No.37 of 2006 was preferred and this Court remanded the matter by an order dated 12.09.2007. The Joint Collector in File

No.F1/07/2008 dated 16.06.2008 observed that Kore Rajappa filed an application on 24.04.1988 before the Mandal Revenue Officer for restoration of

possession and he filed another application before the Mandal Revenue Officer on 14.06.1988 in which he contended that he is eligible for recovery of

possession of the lands in Sy.No.180 to an extent of Ac.11.24 guntas and in Sy.No.182 an extent of Ac.13.17 guntas but he was given possession of

half of the lands i.e. in Sy.No.180 to an extent of Ac.5.32 guntas and in Sy.No.182 to an extent of Ac.6.28 guntas and he requested for restoration of

possession of the remaining land. The said appeal was allowed and the Tahsildar, Veldanda, was directed to restore possession to the appellants.

Against which again C.R.P.No.3209 of 2009 was preferred before this Court and by order dated 11.06.2013 it was remanded and then the Joint

Collector, Nagarkurnool, passed order dated 28.08.2020 and the said order is challenged by the revision petitioners herein.

5. Learned counsel for the petitioners herein would contend that the revision petitioners applied for copy of sworn statement under the RTI Act said to

have been given by their father but it was informed that no such sworn statement is available in record. Learned counsel would also assert that

acceptance of oral surrender is impermissible and contrary to Section 19(3) of the Act of 1950. He would also assert that the total extent of the land in

Sy.Nos.180 and 1823 is Ac.25.01 guntas and half of the land comes to Ac.12.20Ã‚Â½ guntas but the protected tenant claimed only Ac.12.20 guntas as

he is entitled for the same under Section 38-E of the Act of 1950. Learned counsel would also assert that pattadar passbooks were issued in favour of

the legal heirs of Kore Rajappa for an extent of Ac.12.20 guntas and as per the pahanies for the years 1975-1978 the protected tenant has not

surrendered the land. Even in the Protected Tenant Register there is no entry regarding the oral surrender and that they filed certified copy of the P.T.

Register. He would also assert that as the oral surrender is not proved, the rights of the protected tenants are still subsisting and they are continuing

the cultivation and that there is no new material to reverse the finding recorded in the earlier round of litigation and therefore requested the Court to

allow the revision.

6. The respondents herein filed stay vacate petition along with counter by contending that the ancestors of Buchappa and their maternal grandfather

were the absolute owners of the lands in Chekur Village, Kalwakurthy Taluq presently Veldanda Mandal to an extent of Ac.25.00 guntas in

Sy.Nos.180 and 182. Buchappa died in the year 1952 and the lands were divided between his wife Mallamma and Chinna Basappa family in equal

shares. Their names were mutated in khasra pahani in the year 1954-55 and also reflected in the pahanies for the years 1955-56, 1956-57 and 1957-

58. In column No.16 against the name of Kore Rajappa 0-8-0 is mentioned and it reflects that he was the tenant in respect of half share of the land.

He stated that Ramappa, who was the protected tenant, orally surrendered his rights in the year 1953 before introduction of Section 19 of the Tenancy

Act and that the surrender was oral. Chinna Basappa family has given partition of the lands on batai basis to Kore Rajappa and Veerabasappa. Kore

Rajappa surrendered the lands orally in the year 1953 and then Chinnabasappa family was in possession but the Additional Revenue Divisional

Officer, Mahaboobnagar, wrongly issued a certificate under Section 38-E of the Act of 1950 in favour of Kore Rajappa under Section 38-E regarding the lands of Chinnabasappa and as such he preferred an appeal before the Revenue Divisional Officer, Mahaboobnagar. Basing on the ownership

certificate when Kore Rajappa and others tried to interfere with their lands Mallamma filed a suit in O.S.No.63 of 1980 against Kore Rajappa and

others which was dismissed by the judgment dated 30.09.1980. Against which Mallamma preferred appeal viz A.S.No.103 of 1980 which was

allowed by judgment dated 19.11.1983 again second appeal was preferred by the petitioners herein in S.A.No.142 of 1984 which was dismissed on

15.10.1987 and thus the judgment passed in A.S.No.103 of 1980 attained finality. The respondents would further state that in respect of the order

passed by the Mandal Revenue Officer, Veldanda, and also the order passed by the Additional Revenue Divisional Officer vide proceedings dated

04.09.1975 in F.No.D/10/74, cherkur issued final list of protected tenants under Section 38-E in which the name of Kore Rajappa is shown as

protected tenant but he wrongly issued certificate in favour of Kore Rajappa in respect of the lands of Chinnabasappa. When Kore Rajappa gave an

application before the Mandal Revenue Officer, Veldanda, the said application was dismissed on 28.07.1988. He also reiterated the orders of the Joint

Collector and revisions preferred against them. The respondents would further state that as per the orders of the Joint Collector the possession of the

lands were handed over to them under a cover of panchanama. Kore Rajappa family got Ac.2.11 guntas in Sy.No.180 and Ac.6.29 guntas in

Sy.No.182 from Chinnabasappa under tenancy and it was shared between him and his brothers. Subsequently they purchased the land from

Chinnabasappa and became owners of Ac.5.33 guntas in Sy.No.180 and Ac.6.29 guntas in Sy.No.182. The land in Sy.No.180 fell to the share Kore

Rajappa and his brother Shankarappa to an extent of Ac.3.20 guntas and Ac.3.00 guntas respectively. Buchamma sold Ac.3.00 guntas in Sy.No.182

and Ac.3.00 guntas to Veerabasappa. The sons of Kore Rajappa also sold Ac.3.20 guntas in Sy.No.180 vide Document No.1876/2020 dated

29.02.2020 and now they are claiming the lands of Mallamma in Sy.Nos.180 and 182 without having any right and he stated that the order of the Joint

Collector is a reasoned order and it cannot be set aside.

7. The Joint Collector observed that Kore Rajappa surrendered half of the extent of the lands orally prior to 1952-53 to Chinnabasappa and confirmed

the same through the sworn statement filed before the then Mandal Revenue Officer, Vendanda, on 06.06.1988 and the officer is competent to accept

the said statement and accordingly he declared that there are no rights to the protected tenant to restore the lands in Sy.Nos.180 and 182 respectively.

The respondent protected tenant surrendered his rights himself and also gave sworn statement before the competent authority as per Section 19(1)(a)

of the Act of 1950 i.e. termination of tenancy and it was also reflected in khasra pahani i.e. 1954-55 that the protected tenant is having an extent of 0-

8-0 and possession certificate issued to the protected tenant under Section 38-E of the Act 1950 and as such the question of restoration of another half

of the extent does not arise. Accordingly the Joint Collector, Nagarkurnool, confirmed the order of the Mandal Revenue Officer, Veldanda, dated

28.07.1988 and dismissed the appeal.

8. Admittedly, the oral surrender was made prior to 04.02.1954 and it was legal as per Gazette Extraordinary No.29 dated 04.02.1954. In the

proceedings before the Joint Collector, Mahaboobnagar, dated 23.07.2005 Kore Rajappa stated that his statement was not recorded on 06.06.1988 in

the open Court but the Mandal Revenue Officer obtained his signatures on white papers. This clearly shows that he admitted regarding recording the

statement by Mandal Revenue Officer and where as the petitioners herein contended that they have applied for the certified copy of the sworn

statement of Kore Rajappa but the office informed them that it is not available. As Kore Rajappa himself admitted recording of statement by the

Mandal Revenue Officer, the argument of the revision petitioners cannot be accepted. From a perusal of the pahanies 1955-56, 1956-57 and 1957-58 it is noticed that in possession column against the name of the protected tenant it was mentioned as 0-8-0 and the revenue records right from khasra

pahani 1954-55 would reveal that the name of Kore Rajappa is not in possession of the lands even prior to 1954-55. The revision petitioners further

stated that the P.T.Register the oral surrender was not recorded and it was not rounded off and they filed the extract of P.T.Register. Though Kore

Rajappa surrendered half of the extent, later he denied the same and gave an application before the Mandal Revenue Officer for restoration of

possession of the said extent and from then onwards the litigation is continuing. In fact, there was oral surrender before 04.02.1954 and as per the

amendment in Gazette Extraordinary No.29 dated 04.02.1954 the oral surrender before the said date was held to be legal. The orders of the Joint

Collectors were challenged before this Court and again remanded back for fresh consideration. Therefore, it can be presumed that in view of litigation

before Courts, the oral surrender of Kore Rajappa was not recorded in the P.T.Register.

9. Considering the reasons stated in detail in the above paragraphs, this Court finds that there is no reason to interfere with the order of the Joint

Collector dated 28.08.2020.

10. In the result the civil revision petition is dismissed confirming the order under challenge. Interim orders dated 08.09.2021 passed in I.A.Nos.2 and 3

of 2021 shall stand vacated.

11. Miscellaneous Petitions, if any, pending in this revision shall also stand dismissed in the light of this final order.