(1987) 31 KarLJ 1

Karnataka Appellate Tribunal

Case No: Appeal No. 660/1982

Kampli Co-operative Sugar Factory Ltd.,		APPELLANT
	Vs	
T. Koti Reddy		RESPONDENT

Date of Decision: Dec. 23, 1985

Acts Referred:
Contract Act, 1872 â€" Section 23#Karnataka Land Reforms Act, 1961 â€" Section 5

Citation: (1987) 31 KarLJ 1

Hon'ble Judges: C. N. Parashivamurthy, Member; P. B. Chougule, D.J.M.

Judgement

P.B. Chaugule, District Judge Member-This appeal has been directed under Sec. 105 of the Karnataka Co-operative Societies Act, 1959 (the

Act) against the award passed by the Hon. Arbitrator of C.S. Bellary in Dispute No. 1136/ 81-82.

2. The Appellant-Kampli Co-op. Sugar Factory is running a sugar factory at Kampli, Bellary district. For the purpose of its business, the Appellant

factory owns agricultural lands. The Respondent T. Koti Reddy is an agriculturist. The appellant and the Respondent entered into an agreement on

25-5-1977 under which the Respondent was designated as Cane Development Officer on a monthly salary of Re. 1/-and he was entrusted with

the cultivation of 41 acres of land of Survey No. 1424 of Kampli for a period of 4 years commencing from 1-6-1976. Under the terms of the

agreement, the appellant factory was to supply to the Respondent the necessary agricultural implements, machinery and irrigation water free of

cost. Apart from this, the inputs required for growing sugar cane upto a limit of Rs. 2500/- per acre were to be provided by the appellant to the

Respondent. Out of the sugar cane raised in the land, 25 tons of sugar came per acre was to be apportioned by the appellant factory and the

remaining quantity of sugar cane was to be apportioned to the respondent. In other words, the Respondent was entitled to receive all the produce

in excess of 25 tons of sugar cane per acre by way of supervision charges and incentive. With these conditions and other conditions as stipulated in

the agreement dt. 25-5-1977 (Ex. P-1), the Respondent was put in possession of the lands to the extent of 41 acres of Kampli bearing R.S. No.

1424 for the purpose of cultivation of sugar cane for the appellant factory. There were also other conditions stipulated in the agreement regarding

cultivation of the land and also regarding termination of the agreement. The respondent cultivated the lands and raised sugar cane upto the year

1980. On 23-6-1980, without any notice to the Respondent, the appellant factory resumed possession of the land under a mahazar. Thereupon

the Respondent raised a dispute under Sec. 70 of the Act claiming damages end interest thereon to the tune of Rs. 5,71,000.29 against the

appellant factory. It was the case or the respondent that the factory failed to supply water and fertilisers, etc., to him as per the terms of the

agreement, as a result of which he suffered a loss. So in that behalf ha claimed damages of Rs. 2,07,795-29 as per the Annexure to the Plaint. He

also claimed interest of Rs. 67,735/- at 18% on the said amount from 1977 to 1981. He also claimed damages for two crop years to the extent of

Rs. 2,95,200/- for not giving him two years notice before terminating the agreement. In addition, the Respondent claimed Rs. 270/-towards

demand and correspondence charges incurred by him. Thus in all the Respondent claimed Rs. 5,71,000 29 from the appellant. The appellant

factory denied all the averments made in the Plaint and stated that there was no short supply of water or manure at any time. It was further stated

that the factory had paid money in advance to the Respondent in excess of what was mentioned in the agreement. It was denied that the

respondent had suffered any loss. The appellant factory produced a statement of account to disprove the allegation made by the Respondent and

submitted that several concessions were given to the respondent and his losses were compensated and as such the Respondent was not entitled to

any damages for the losses. It was denied that there was any illegal termination of the agreement, it was contended that the Respondent was not

entitled for payment of damages for two crop years. It was stated that the Respondent was no entitled for any interest or damages and the dispute

was not maintainable under Sec. 125 of the Act. The appellant stated that they have paid Rs. 50,000/-on 5-7-1980 to the Respondent in full and

final settlement of the claim. For these reasons, the appellant prayed for the dismissal of the dispute.

3. On the pleadings of the parties, the learned Hon. Arbitrator framed several issues and recorded the evidence and masked a number of

documents. He has come to the conclusion that there was short supply of water and fertiliser by the factory to the Respondent and as a result of

which the respondent suffered loss but not to the extent of claimed by him. He has further held that the factory did not compensate the Respondent

in full. According to the Arbitrator, the appellant had committed a breach of the agreement and therefore the appellant was liable to pay damages

to the respondent as he has suffered loss. As regards future damages of 2 crop years, he has held that the appellant assented the respondent to

continue in possession even after the period fixed was over i.e. even after 31-5-1980 as a result of which the respondent became a tenant by

holding over and therefore without notice to him as per the agreement he could not have been evicted at all and as such he is entitled to two crop

years compensation. In the result, he has passed an award under which he has granted compensation of Rs. 4,53,231-63 to the Respondent.

Being aggrieved by the said award, the appellant factory has come up in appeal before us.

4. Arguments advanced by the learned counsel for the appellant and the learned counsel for the Respondent and the learned State Representative

were heard and the records were perused. The first question for our consideration is whether the dispute filed by the Respondent is not a dispute

covered under the provision of Sec. 10 of the Act. It was argued by the learned counsel for the appellant that the Respondent T. Koti reddy was

not an employee of the appellant factory and therefore the dispute could not have been referred by the Registrar for arbitration. In para 3 of the

Plaint it is specifically alleged that the Respondent (Plaintiff) was taken as the Cane Development Officer i.e. an employee of the appellant

(defendent) factory on a monthly salary of Re. 1/-with all incentives as per the terms of the agreement. The appellant factory in their written

statement para 3 have stated that the allegations made in para 3 of the plaint are true. In view of this admission by the appellant that the respondent

was employed by them as a Cane Development Officer, it does now lie in the mouth of the appellant to contend that the respondent was not their

employee and therefore the Registrar could not have entertained the dispute. Hence, there is no force in the arguments advanced by the learned

counsel for the appellant.

5. It was nextly argued by the learned counsel for the appellant that even assuming that the respondent was an employee of the factory, the claim

made by him was not in the capacity of an employee and therefore, the Registrar could not have entertained the dispute. The claim of the

respondent was based on the allegation that there was a breach of the agreement. In our opinion, even assuming that the claim was made by the

Respondent not as an employee of the appellant, the same was maintainable under Sec. 70 of the Act.If any authority were needed on this point, it

is to be found in the decision reported in 1963 (2) MLJ Page 294 (Hukkeri Urban Co-op. Bank Ltd. v Meera Saheb Nabi seheb Nadaf). In the

said decision a member of society had made deposits with the society and he filed a suit for the recovery of the deposit The deposit was made with

the society not as a member. The High Court held that the claim being by a member against the society, Civil suit was barred by Sec. 54 of the

Bombay Co-operative Societies Act. The High Court has further held that Sec. 54 of the Act is not intended to operate only in the case of those

disputes to which a member is a party as a member. It was laid down that a dispute should have been raised by the member for the recovery of the

depost under the provision of the Bombay Co-op. Societies Act. The principle laid down in the said decision is aptly applicable to this case. In

view of the principle laid down in the said decision we hold that the Respondent being an employee of the appellant society, the claim made by him

against the society though not as an employee was maintainable u/s 70 of the Act.

6. The next and crucial question for our determination is whether the impugned award is sustainable in Iaw. The claim of the Respondent for

damages against the appallant factory was based on the agreement (Ex. P-1) dated 25-5-1977. The terms and conditions of the said agreement

were admitted by the appellant. On a careful consideration of the terms of the said agreement and the evidence of the parties we have come to the

conclusion that the transaction in question amounts to a lease and the parties could not have created a lease after 1-3-1974 and as such the alleged

transaction is illegal and therefore the claim based on such an illegal transaction cannot be maintained. As per the terms of the agreement Ex. P-1,

which came into force w.e.f. 1-6-1976, Respondent was put in possession of the factory land to the extent of 41 acres of Kampli for the purpose

of cultivation of sugar cane for a period of 4 years. The Respondent was to cultivate the said land for a period of four years as per the terms and

conditions of the agreement. One of the important terms of the agreement (Clause No. 5) was that 25 tonns of sugar cane per acre was to be

apportioned by the factory and the remaining quantity of sugar cane was to be apportioned by the Respondent. Clause 5 of the agreement, which

is material to understand the real nature of the transaction, reads thus:

Clause 5: The entire sugarcane raised on the S. No. 1424 of the Factory Farm belongs to the Party number one here in and after deducting 25

tonnes per acre, the remaining quantity of sugarcane will be apportioned to the second party and he shall be entitled to receive all the produce in

excess of 25 tonnes of cane per acre stipulated above by way of Supervision charges and incentive.

In order to ascertain as to whether the agreement between the parties is a lease, it is necessary to know the definition of lease. Section 105 of the

Transfer of Property Act, 1882, defines "lease" thus:

105. A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity,

in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered, periodically or on

specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

As already stated, the lands were transferred by the appellant for cultivation of sugar cane and the respondent was to enjoy the same for a period

of four years as per the terms and conditions of the agreement. Though the words "lease" and "rent" are not mentioned in the agreement, it is

evident from the agreement that 25 tonns of sugar cane per acre was to be received by the society and the remaining quantity of sugar cane was to

be apportioned or taken by the Respondent. The very fact that a particular quantity of sugar cane per acre was reserved for the appellant factory

indicates that it was by way of rent to be paid by the respondent. The fixation of nominal salary of Rs. 1/-per month shows that the Respondent

was not in reality an employee of the appellant factory but such a status was conferred on him under the agreement just to bring the dispute, if any

that would arise in future under the provisions of the Act. The real nature of the transaction in question in our opinion is no less than a lease. The

intention of the parties rather than the words employed in drafting the agreement is important. The fact that the factory was to supply water and

fertilisers etc. to the Respondent for the cultivation of the land would not change the nature of the transaction. The Respondent Kotireddy in his

evidence (Examination inchief-para 1) has clearely stated that the appellant factory asked him to cultivate their lands on lease. The reading of the

judgement of the lower-court shows that the case of the respondent in the trial court was that the transaction in question was in fact a lease (para

11 of the judgement). The lower-court has awarded two years crop compensation on the basis that the transaction in question was a lease and the

lease was not terminated by two years notice as per the terms of the agreement and as required under the provisions of the Transfer of Property

Act. The trial court in para 11 of its judgement has observed thus:

The Advocate for the Plaintiff argued that reading Section 105 of the Transfer of the Property Act, this agreement comes clearly within the four

corners of the definition of lease. In whatever manner, the document recites, as it is immovable property and if it is a transfer for a mother with right

to enjoy, such property for a period in consideration of price paid or promised or for money or a share in the crop, service or any other thing of

value to be rendered periodically to the transfer of the same, the transferee who accepts the transfer on such terms is a lease. By reading this

section it is quite clear that any transfer, wherein there is a transfer of immoveable property from the person to an another in consideration of things

mentioned above, it becomes a lease. The words used in the shape of the agreement Ex. P-1 and the recitals thereunder clearly indicate it is a

transfer of land from the Defendant Factory to the Plaintiff for cultivation against payment in the form of share in the produce viz. sugar cane crop. I

therefore feel that the argument of the Advocate for the Defendant in this regard that it is not a lease cannot be accepted.""".....

Whenever the question arises as to the nature of the document the same has to be decided after looking into the intention of the parties rather than

relying on the words employed in drafting the document. On a careful consideration of the terms of the agreement and the evidence and conduct of

the parties, we have no hesitation in coming to the conclusion that the transaction entered into between the parties was a lease transaction.

7. Section 5 of the Karnataka Land Reforms Act, 1961 reads thus:

5. Prohibition of leases, etc.-(1) Save as provided in this Act, after the date date of commencement of the Amendment Act, no tenancy shall be

created or continued in respect of any land nor shall any land be leased for any period whatsoever.

(2) Nothing in sub-section (1) shall apply to a tenancy created by a solder or a seaman if such tenancy is created while he is serving as a solder or

a seaman or within three months before he became a solder or a seaman.

(3) Every lease granted under sub-section (2) shall be in writing.

The said provision came into force w.e.f. 1-3-1974. Thus, after 1-3-1974 except in certain cases no lease of an agricultural land could be created.

The lease in question was created after 1-3-1974. As the said lease was prohibited by virtue of the amendment Act, the same is illegal and any

claim made for the breach of the conditions of the lease cannot be sustained. In this view of the matter, we held that the claim for damages made

by the Respondent for the breach of the conditions of the lease (Ex. P-1) is not maintainable in law even assuming he has sustained any loss for

breach of the agreement by the appellant. Therefore, the award passed by the learned Arbitrator cannot be sustained and is liable to be set-aside.

8. In the result, the Appeal is allowed and the impugned award is set-aside. The dispute filed by the Respondent is dismissed. In the circumstances,

there will be no order as to costs.

Appeal is Allowed.