(1979) 04 KAR CK 0019

Karnataka High Court

Case No: WA 488/77

Parayya Irayya		APPELLANT
	Vs	
Land Tribunal Mudhol and Others		RESPONDENT

Date of Decision: April 6, 1979

Acts Referred:

- Karnataka Land Reforms Act, 1961 - Section 48a
- Transfer of Property Act, 1882 - Section 58

Citation: (1979) 2 KarLJ 282

Hon'ble Judges: Chandrashekhar, C.J.; Puttaswamy, J

Judgement

Puttaswamy, J.-This appeal arises out of an order made by Bhimiah, J., allowing Writ Petition No. 9347 of 1976 filed by respondent No. 3 against the, order dated 6-9-1976 of the land Tribunal, Mudhol, (hereinafter referred, to, as ''the Tribunal'') in Case No. KLR. 734. The appellant herein was respondent No. 2 therein.

2. Among others, the appellant is the owner of agricultural lands bearing S. Nos. 115/11 and 115/15 measuring 4 acres and 18 guntas and I acre and 27 guntas respectively of Kulali village, Mudhol Taluk. Admittedly under an agreement dated 16-11-1967 entered into between the appellant and respondent No. 3, the latter has been cultivating the said lands from that date. Under S. 48A(1) of the Karnataka Land Re-forms Act, 1961 (hereinafter referred to as ''the Act'') respondt. No. 3 filed an application in Form No. 7 before the Tribunal for conferment of occupancy rights to the said lands, alleging that he was in possession of those lands as a tenant of the appellant. Before the Tribunal, the appellant opposed the application of respondent No. 3 on the ground that he (respondent No. 3) was in possession of the lands under the agreement dated 16-11-1967, a self-redeeming mortgage, and he was not in possession of them as his tenant and therefore the Act had no application. On a consideration of the agreement dated 16-11-1967 and the evidence placed by the parties, the Tribunal by its order dated, 6-9-1976, accepted the case of the appellant

and rejected the application of respondent No. 3 which was challenged by him before this Court in Writ Petition No. 9347 of 1976. On 5-10-1977, Bhimiah, J. has allowed the said writ petition of respondent No. 3 and the application made by him for conferment of occupancy rights and has directed the Tribunal to register him as an occupant of the lands.

3. Shri G.B. Shastri, learned counsel for the appellant, contended that the learned single Judge was in error in holding that the agreement dated 16-11-1967 was a deed of lease and was not a deed of mortgage and respondent No. 3 was therefore entitled for conferment of occupancy rights. In support of his contention, Shri Shastri relied on the ruling of Venkataramiah, J. in Veerappa Rudrappa Alagawadi v. Land Tribunal, (1976) 1 Kar.L.J. 98. Shri A.V. Albal, learned counsel for respondent No. 3, sought to support the order of the, learned Single Judge on the reasoning and conclusion drawn by him. Shri Albal maintained that the question is conclude by the ruling of. the Supreme Court in Fuzhakkal Kuttappu v. C. Bhargavi, AIR 1977 SC. 105

4. An answer to the question, depends on the construction of the, document dated 16-11-1967 and therefore it is useful to read the same and the same reads thus:

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Among others, the following are the important terms agreed to between the parties in the aforesaid agreement:

(i) that respondent No. 3 has entered into possession of the lands from the date of the agreement for cultivation purposes;

(ii) that respondent No. 3 should render the lands fit for cultivation and repair the wells at his own expense and labour, cultivate them and take all the usufruct thereof for a period of 12 yeas paying all the taxes and ceases due to Government during the said period and on the completion of the aforesaid term of 12 years i.e., after 1979-80, redeliver their possession to the appellant;

(iii) that during the enjoyment and cultivation of the lands for the aforesaid period, respondent No. 3 is not required to pay any premium or rent to the appellant.

5. On an examination of the aforesaid document and its terms thereof, the law declared by this Court in Veerappa Rudrappa Alagawadi''s case, (1976) 1 Kar.L.J. 98 and the evidence on record, the Tribunal was of the view that the document was a (self redeeming mortgage) and was not a deed of lease and there was no relationship of landed and tenant between the parties and therefore respondent No. 3 was not entitled, for conferment of occupancy rights in the lands. The jurisdiction of the Tribunal to decide the issue and reach that conclusion cannot be and is not in dispute. We are of the view that the Tribunal which is aware of the local variations of the transactions in reaching its conclusion, has not committed a manifest error of law so as to call for interference of this Court under Art. 226 of the Constitution. It appears to us that this aspect has been overlooked by the learned

single Judge. But, we do not propose to rest our conclusion on this ground only and therefore proceed, to examine whether the view taken by the learned single Judge is correct or not.

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6. If the document is couched in language which is clear and definite and no doubt arises in its application to the facts, there is no need to resort to rules of interpretation. Rules of interpretation have to be applied only when the exact meaning of a document is in doubt and is not clear and definite, (vide page 3 of ''Interpretation of Documents'' by Sir Roland Burrows, 2nd Edn.). Intention of the parties to an instrument must be, gathered from the terms of the agreement examined in the light of the surrounding circumstances. The description given by the parties may be evidence of the intention but is not decisive, (vide, para 9, page 548 Sohan Lal Naraindas v.Laxmidas Raghunath Gadit, (1971) 1 SCWR. 544. A document should not only be construed as a whole but also, if possible, be construed so as to give effect to every word, and the Court is not at liberty to disregard a word if some meaning can be given to it (vide page 62 of ''Interpretation of Documents'' by Sir Roland Burrows, 2nd Edn.). In Fuzhakkal Kuttappu''s case, AIR 1977 SC. 105, the Supreme Court has only reiterated the above principles and has examined the document in that case on the basis of the above principles. It is in the light of the above principles, we will have to examine whether the document dated 16-11-1967 is a or a self re deeming mortgage or a deed of lease as contended for respondent No. 3.

7. Under the deed, respondent No. 3 has taken possession of the lands from the appellant agreeing to render the lands fit for cultivation, improve the existing wells, cultivate them and take all the usufruct thereof for a period of 12 years without paying any premium or rent to the owner of the lands and redeliver them after the stipulated time. Such a document without applying any of the rules of construction of documents, can only be construed as a that being the term that is in vogue in the Bombay Karnataka area or a that is in vogue in the old Mysore area. As held by Venkataramiah, J. in Veerappa Rudrappa Alagawadi''s case, (1976) 1 Kar.L.J. 98, with which we are in agreement is in the nature of an or a self redeeming mortgage and that during or after the expiry of the term stipulated in such a deed, the person in possession will not be a tenant and therefore the provisions of the Act cap have no application to such cases.

8. The document dated 16-11-1967 is only an agreement, the terms of which we have already noticed. There is no stipulation for payment of any premium or rent by respondent No. 3 to the appellant. In these circumstances, we find it difficult to hold that the agreement dated 16-11-1967 is a deed of lease as claimed by respondent No. 3.

9. In Fuzhakkal Kuttappu''s case, AIR 1977 SC. 105, the Supreme Court had to consider whether a deed styled as ''Otti deed'' drawn up in Malayalam language of Kerala State, was a deed of lease or a mortgage. Applying the well recognised principles of interpretation of construction of documents, the Supreme, Court agreed with the view taken by the High Court of Kerala that the said deed was a deed of lease and was not a deed of mortgage as held By the trial court. That deed itself, among others, provided for payment of rent to the landlord which was taken as the dominant factor to hold that the said deed was a deed of lease, which is absent in this case. We cannot interpret a document in one case by the interpretation placed on another document in another case. We are of the view that Fuzhakkal Kuttappu''s case, is of no assistance to respondent No. 8 to hold that the document in question is a deed of lease and the learned singleJudge was in error in accepting the same. We are therefore of the view that the claim of respondent No. 3 based on the agreement dated 16-11-1967 had been rightly rejected by the Tribunal.

10. Shri Albal contended that the finding of the learned single Judge that respondent No. 3 was in possession of the lands for over 18 to 19 years, and he was a deemed tenant under S. 4 of the Act and was therefore entitled for conferment of occupancy rights in the lands is correct.

11. In the application and in his evidence, the case of respondent No. 3 was that he was in possession of the lands under the agreement dated 16-11-1967. In his evidence before the Tribunal, respondent No. 3 has admitted the execution and the contents of the document dated 16-11-1967. His oral evidence, which is contrary to the deed dated 16-11-1967 has been rejected by the Tribunal. Even the evidence of the appellant, that respondent No. 3 has not been cultivating the lands as his tenant has not been challenged by him. The Tribunal has held that respondent No. 3 was in possession of the lands under the deed dated 16-11-1967. We are of the view that this finding of the Tribunal on the consideration of the evidence, on record being a question of fact is not open to review under Art. 226 of the Constitution. We cannot therefore persuade ourselves to agree with the said finding of the learned single Judge.

12. For the above reasons, we hold that the order of the learned single Judge requires to be reversed and the order of the Tribunal has to be restored. We therefore allow this appeal, reverse the order of the learned single Judge, restore, the order of the Tribunal and dismiss Writ Petition No. 9347 of 1976 filed by respondent No. 3. But we direct the parties to bear their own costs in this Appeal as also before the learned single Judge.