

A CHANNABASAPPA (DEAD) BY LR & ANR.

v.

STATE OF KARNATAKA & ORS.

(Civil Appeal No. 8289 of 2013)

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SEPTEMBER 17, 2013

[SUDHANSU JYOTI MUKHOPADHAYA AND
RANJAN GOGOI, JJ.]

C *Karnataka Land Reforms Amandment Act, 1974 – Form*
No.7 – Application under – Respondent No.2 claiming to
have sent application in Form No. 7 by post to Special
Tehsildar, Land Reforms – Pursuant to direction of High Court
enquiry u/s.48-A conducted by Land Tribunal after taking on
D *record, the Xerox copy of the application produced by*
respondent No.2 – Tribunal held that no application under
Form No.7 was on record – In Writ Petition, Single Judge of
High Court remanded the matter to Land Tribunal for finding
out whether respondent made application under Form No.7
E *and whether the same was on record – Order of Single Judge*
upheld in review as well as Writ Appeal – Held: The order of
the Single Judge in remanding the matter to the Tribunal
again, rendered the order passed by the Tribunal ineffective
for no reason – It was not open to Single Judge to remand
the matter to Land Tribunal.

F **The 2nd respondent (since deceased) filed an**
application before Special Tehsildar, Land Reforms,
contending that he had sent an application on 23.6.1975
in Form No.7 for registering him as an occupant of the
lands belonging to the appellants. The Special Tehsildar
G **replied that there was no record having received such**
application. Respondent No.2 filed writ petition. High
Court remitted the matter to Land Tribunal for enquiry u/
s. 48-A of Karnataka Land Reforms Act, 1974. Land
Tribunal accepted the xerox copy of the application in

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Form No.7 produced by respondent No.2 for the enquiry. It rejected the application holding that the lands were in self-cultivation of the appellants and 2nd respondent was not their tenant. Respondent No.2 challenged the order of Land Tribunal. Single Judge of High Court remitted the matter to the Tribunal to find out whether application under Form No.7 existed on records and whether the 2nd respondent had filed the application in Form No.7. Review Petition as well as Writ Appeal against the order of Single Judge were dismissed. Hence the present appeal.

Allowing the appeal, the Court

HELD: The Land Tribunal admitted Form No.7 produced by the 2nd respondent in view of the High Court's direction dated 5th August, 1991 and on enquiry made under Section 48-A of Karnataka Land Reforms Act, 1974 gave definite finding that the 2nd respondent was not in occupation or cultivation of the suit land as a tenant as on 1st March, 1974 or prior thereto. In view of such finding of the Tribunal, it was not open for the Single Judge to remand the matter again to the Tribunal to enquire whether Form No.7 was on record or Form No.7 was produced by the 2nd respondent which in fact rendered the order dated 2nd June, 1997 passed by the Tribunal ineffective for no reason. The Division Bench of the High Court also failed to notice the above-said fact and thereby erred in affirming the order passed by the Single Judge. [Paras 12 and 13] [153-A-B; 154-D-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8289 of 2013.

From the Judgment & Order dated 02.06.2006 of the High Court of Karnataka at Bangalore in W.A. No. 3836 of 2005 (LR).

Rajesh Mahale, Krutin R. Joshi for the Appellants.

A Sanjay R. Hegde, Kirit S. Javali, Azeem, Ankolekar
Gurudatta for the Respondents.

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. Leave

B granted.

1. This appeal has been preferred by the appellants
against the judgment and order dated 2nd June, 2006 passed
by the Division Bench of the High Court of Karnataka at
Bangalore in W.A. No.3836/2005(LR). By the impugned
C judgment the Division Bench dismissed the appeal preferred
by the appellants herein and affirmed the order passed by the
learned Single Judge, whereby the learned Single Judge
directed the Land Tribunal to verify the aspect of filing of Form
No.7 by the tenant.

D 2. The factual matrix of the case is as follows:

The appellants claim to be the owners of lands in Sy. Nos.
33, 37, 38, 39, 40, 41 and 53 situated in village Halligeri,
Dharward Taluk, Karnataka, having purchased the same in the
E year 1956. According to the appellants, the lands were in their
personal cultivation since then.

3. The 2nd respondent, Gangappa (since deceased) filed
an application before the Special Tahasildar, Land Reforms,
Dharwad, contending therein that he had sent an application
F on 23rd June, 1975 in Form No.7 for registering him as an
occupant of the lands belonging to the appellants. The Special
Tahasildar, Land Reforms, on 31st October, 1987 replied that
there was no record of having received such an application from
the 2nd respondent in respect of the lands in question and no
G entry was made in the Register of Form No.7 maintained by
the Land Tribunal.

4. The 2nd respondent filed Writ Petition No.4165/1988
in the High Court of Karnataka at Bangalore with the prayer for
a direction to the Tribunal to conduct enquiry under Section 48-
H A of the Karnataka Land Reforms Act, 1974 (hereinafter

referred to as the "Land Reforms Act") and to grant him occupancy rights. In support of his claim for having sent the application, the 2nd respondent had produced a xerox copy of a postal receipt and acknowledgment. The High Court by its order dated 5th August, 1991 remanded the matter to the Land Tribunal to consider whether in fact the 2nd respondent had filed an application in Form No.7, and if it was found that he had made such an application, then to consider it on merits in accordance with law. The said order was challenged before the Division Bench of the High Court as well as by way of Special Leave Petition before this Court unsuccessfully.

5. After a detailed enquiry, by the order dated 2nd June, 1997, the Land Tribunal found, on evidence produced before it, that the 2nd respondent had not proved that he had in fact sent an application to the Land Tribunal in Form No.7.

Before the Land Tribunal, the 2nd respondent produced xerox copy of the Form No.7 on 27th November, 1993, claiming to be the one sent by him by post.

Although, the Land Tribunal came to the conclusion that there was no proof of filing of Form No.7 by the 2nd respondent, unanimously it decided to admit the copy produced by the 2nd respondent on 27th November, 1993 for enquiry under Section 48-A of the Land Reforms Act and, upon evidence, held that the lands were in self-cultivation of the appellants and the 2nd respondent was not a tenant of the lands in question as on 1st March, 1974 or immediately prior thereto and as such rejected his application on merits.

6. The 2nd respondent being aggrieved filed a writ petition being W.P. No.15722/1997 challenging the correctness of the order of the Land Tribunal. Though the learned Single Judge noticed that the Land Tribunal had admitted the xerox copy of the Form No.7 produced by the 2nd respondent on 27th November, 1993 and had conducted an enquiry thereon under Section 48-A of the Land Reforms Act, learned Single Judge,

A by the judgment dated 3rd June, 2005 remitted the matter to the Tribunal to find out whether the application existed in the records and whether in fact the 2nd respondent had filed an application in Form No.7.

B 7. The appellants thereafter filed a review petition before the learned Single Judge bringing to the notice of the learned Single Judge that the copy of the application found in records was the one which the second respondent had filed on 27th November, 1993 and that the remand was unnecessary as the application was admitted and enquiry was conducted thereon.
C However, learned Single Judge did not appreciate the grounds for the review and dismissed the review petition on 1st July, 2005.

D 8. The appellants being not happy preferred the writ appeal in question before the Division Bench which dismissed the same by the impugned judgment on 2nd June, 2006.

E 9. Notices were issued to respondents. The legal representatives of the 2nd respondent who are party respondents appeared.

F 10. Learned counsel for the appellants submitted that the Land Tribunal having accepted the filing of the Form No.7 by the 2nd respondent, there is no question of remitting the matter again to the Tribunal to find out whether the Form No.7 is available on records and whether the Form No.7 was filed by the 2nd respondent.

G 11. Learned counsel for the respondents submitted that the 2nd respondent had produced the copy of the Form No.7 and made it available on records to the Land Tribunal and the case was rightly remanded to make a detailed enquiry under Section 48-A of the Land Reforms Act. However, such submission cannot be accepted in view of the finding already recorded by the Land Tribunal.

H 12. On perusal of order dated 2nd June, 1997 passed by

the Land Tribunal, we find that the Land Tribunal admitted Form No.7 produced by the 2nd respondent in view of the High Court's direction dated 5th August, 1991 passed in W.P.No.4165/1988 and on enquiry made under Section 48-A, held as follows:

".....In spite of this, in view of the directions dated 5-8-91 in W.P. No.4165, the Form No.7 produced by the applicant is admitted and enquiry upon the same is taken up by unanimous opinion of the Land Tribunal.

Applicant has not produced any document to prove that he was in possession and cultivation of the suit lands on 1-3-1974 or immediately prior thereto. Except his own statement, the applicant has not produced any evidence to establish that he held the lands on crop share basis. In this respect, he has not produced any acceptable evidence. But on the other hand, the opponents have produced pahani records for the years prior to 1974 as well as for subsequent years, in which nowhere the name of the applicant is appearing in the cultivator's column. It is apparent that all the lands were in self cultivation.

Apart from this, the opponents have produced tax paid receipts in respect of the suit lands. The opponents have also given a declaration regarding their holding under Section 86 of the Karnataka Land Reforms Act, claiming it to be under self cultivation and vide order NO.KLR:D:SR:752 dated 25-3-82, this Land Tribunal has accepted the declaration holding that he is not in possession of excess lands. In the said order there is no mention about the said lands being subject to tenancy. For all these reasons, the following order is passed by unanimous opinion of this Land Tribunal.

ORDER

It is decided unanimously that the applicant was not in

A *occupation and cultivation of the suit lands as a tenant on 1-3-1974 or immediately prior thereto.*

This order is pronounced and read out in open Court on 2-6-97.

B Sd/-
Land Tribunal, Dharwad

Members:

- C
 1. Sd/-
 2. Sd/-
 3. Sd/-."

D 13. Thus, it is clear that the Tribunal admitted Form No.7
E produced by the 2nd respondent and on an enquiry gave
F definite finding that the applicant-2nd respondent was not in
occupation or cultivation of the suit land as a tenant as on 1st
March, 1974 or prior thereto. In view of such finding of the
Tribunal it was not open for the learned Single Judge to remand
the matter again to the Tribunal to enquire whether Form No.7
is on record or Form No.7 was produced by the 2nd respondent
which in fact rendered the order dated 2nd June, 1997 passed
by the Tribunal ineffective for no reason. The Division Bench
of the High Court also failed to notice the above-said fact and
thereby erred in affirming the order passed by the learned
Single Judge.

G 14. For the reasons aforesaid, we set aside the impugned
order dated 2nd June, 2006 passed by the Division Bench in
W.A.No.3836/2005(LR) and order dated 3rd June, 2005
passed by the learned Single Judge in W.P. No.15722/1997,
order dated 2nd June, 1997 passed by the Land Tribunal,
Dharwad is restored. The appeal is allowed. There shall be no
order as to costs.

H K.K.T. Appeal allowed.