

BHIMAPPA CHANNAPPA KAPALI(D) BY LRS. AND ORS. Appellants

VERSUS

BHIMAPPA SATYAPPA KAMAGOUDA & ORS. Respondents

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Leave granted.

Appellant herein is the son of one Shivawwa's brother. 1st respondent is the son of Shivawwa's husband's brother Girappa Kamagouda. The dispute is between these two persons in respect of a land which belonged to Shivawwa. A Gift Deed has been executed by Shivawwa in favour of the 1st respondent way back in 1951, but possession of the gifted property was retained by the Shivawwa till her life time. Shivawwa died in the year 1996.

Appellant claims tenancy right in respect of the property on the ground that a tenancy was created by Shivawwa in his favour. That claim was upheld by the Land Tribunal under the provisions of the Karnataka Land Reforms Act. Against the said order 1st respondent filed a writ petition in the High Court. A learned Single Judge interfered with the said order of the Land Tribunal by stating that 1st respondent alone has right in the property on the strength of the Gift Deed. Learned Judge also held that the tenancy claimed by the ..2/-

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appellant has not been substantiated. A Division Bench of the High Court while dealing with the writ appeal did not interfere with Single Judge's order. This appeal is in challenge of the judgment delivered by the Division Bench.

Learned counsel for the appellant relied upon the entries made in the Record of Rights kept in the office of Kabbur Village (Chikkodi Taluk). The said Record of Rights prima facie indicated that a tenancy has been created in favour of the appellant on 2.7.1964. Learned Single Judge did not act on the said entry in the Record of Rights. The sheet-anchor of the claim of the appellant is the said entry in the Record of Rights. The said aspect escaped consideration by the Division Bench.

Learned counsel for the 1st respondent adopted a twin contention to meet the aforesaid fact. First is that no tenancy had been created by Shivawwa in favour of the appellant. Second is that even if there was any such arrangement made between the Shivawwa and the appellant the same would have come to an end with the death of Shivawwa, for, she had executed the Gift Deed in 1961 itself and the donee is the 1st respondent himself.

Learned counsel for the appellant contended that under the Karnataka Land Reforms Act if a tenancy has been created even by a limited owner (as in the case of Shivawwa) that tenancy would survive after the death of the donor and such tenancy would gain fixity of tenure.

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We noticed that two crucial points had not been considered to by the Division Bench. They are:

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- (i) Whether a tenancy had been created by Shivawwa in favour of the appellant and the entries in the Record of Rights (referred to above) could be taken as proof thereof; and
- (ii) If there was any tenancy whether that would survive the death of Shivawwa, particularly in view of the admitted position that after Gift Deed has been created by Shivawwa in the year 1961 she had only a limited interest in the property.

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As the Division Bench has not adverted to the above two crucial aspects we deem it necessary that the matter must go back to the Division Bench for disposal of the writ appeal afresh. For the said purpose we set aside the impugned order of the Division Bench and the matter is remitted to the High Court for disposal of the writ appeal afresh.

This appeal is disposed of accordingly.

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(K.T. THOMAS)@@

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JANUARY 2, 2001 @@

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