*QITEM NO.104 COURT NO.11 SECTION IVA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 571-572 OF 2003

KARIGOWDA & ANR. Appellant (s)

VERSUS

STATE OF KARNATAKA & ORS. Respondent(s)

Date: 16/03/2010 These Appeals were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE AFTAB ALAM
HON'BLE MR. JUSTICE SWATANTER KUMAR

For Appellant(s) Mr. Naveen R. Nath,Adv.
Ms. Lalit Mohini Bhat, Adv.
Ms. Amrita Sharma, Adv.

For Respondent(s) Mr. Naresh Kaushik, Adv.
Ms. Amita Kalkal, Adv.
Mrs Lalita Kaushik,Adv.

Mr. Sanjay R. Hegde ,Adv

UPON hearing counsel the Court made the following
O R D E R

The appeals are allowed in terms of the signed order.

(Neetu Khajuria) (R.K. Sharma)
Sr.P.A. Court Master

(Signed order is placed on the file.)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.571-572 OF 2003

KARIGOWDA & ANR. .....Appellants

VERSUS

STATE OF KARNATAKA & ORS. .....Respondents

O R D E R

These appeals arise from the rival claims for occupancy rights raised by the appellants and respondent No.3 in respect of the dry land measuring 7 Acres 35 Guntas in Survey No. 246 of Hosa Agrahara that was a devadaya inam land belonging to Gowri Devaru Temple.

Before the Land Reforms Tribunal, Mysore, apart from the State of Karnataka who was the respondent to the proceeding, there were two sets of claimants. Respondent No.3, who was admittedly the Archaka (Priest) of the temple, claimed, as grantee of Inam land, the entire area of 7 Acres 35 Guntas of Survey No.246. On the other hand, appellant No.1 claimed 4 Acres and appellant No.2 claimed 3 Acres 35 Guntas out of the total area of Survey No.246. Both the appellants claimed to be in cultivating possession of the land under respondent no.3.

The Land Reforms Tribunal was a five member body and in this case there was a division of opinion. Three of the Tribunal's members, that is, the majority, held that the appellants were entitled to have their names registered as occupants of the land. One of the members was in favour of respondent No.3, while the Chairman, who was the Special Assistant Commissioner, Land Reforms Tribunal, agreed with the report of the Tehsildar and held that the disputed land should be recorded in the name of the State Government. The order of the Tribunal was penned by the Chairman. Therefore, it does not clearly indicate the reasons that weighed with the three members, who decided in favour of the two appellants. The Tribunal's order indeed took note of the respective evidences led by the two appellants and respondent No.3. It noted that according to the RTC, the disputed land was cultivated by respondent No.3 since the year 1971-1972. Further, for the previous years from 1964-1965 to 1969 to 1970, there was a mention of the two appellants being in

cultivating possession of the land. In the Pahani relating to the year 1965-1966 in Column 4, there was the mention of respondent No.3, and the two appellants as persons cultivating the land. (Pahani is part of the revenue records and it mentions the name of the person in actual cultivating possession of the land).

In the end, the Chairman held that neither respondent No.3 nor the two appellants were able to prove that they were in cultivating possession of the disputed land continuously for twelve years before 1 July, 1970, the cut off date under the Act. He, therefore, accepted the Tehsildar's report and held that the State of Karnataka had to be registered as occupant of the disputed land. However, as per the majority view, appellants 1 & 2 were registered as the occupants of the land and the claim application of respondent No.3 was rejected.

Against the order of the Land Reforms Tribunal, the State Government did not prefer any appeal but respondent No.3 came in appeal before the Land Reforms Appellate Authority, Mysore. The Appellate Authority considered the rival claims at length. It examined the revenue records and the respective evidences produced by the two sides. On a detailed consideration of all the relevant materials, it came to hold that all the materials produced by respondent No.3 pertained to the period subsequent to the cut off date, 1 July, 1970, and there was nothing to indicate that he was in cultivating possession of the land on the cut off date and immediately prior to that date. On the other hand, the Pahani records supported the claim of the two appellants and showed them to be in actual cultivating possession of the land in question on 1 July, 1970 and immediately prior to that date, though under respondent No.3 as Archaka of the temple. On the basis of the materials before it, the Appellate Authority held in favour of the appellants and by order dated 1 January, 1988 dismissed the appeal of respondent No.3.

Against the order of the Land Reforms Appellate Authority, respondent No. 3 preferred a Revision (LRRP 2264/1988) before the High Court of Karnataka. In the first round, the Revision was allowed by order dated 10 July, 1995 passed ex-parte against the appellants (respondents 4 & 5 before the High Court). The High Court order was eventually set aside by this Court by Order dated 28 November, 1997 passed in Civil Appeal No. 8411 of 1997 and the case was remitted to the High Court for passing a fresh order after hearing both the sides.

After remand, the Revision was once again allowed by order dated 30th March, 2000, and unfortunately for the appellants, for the second time their case went unrepresented before the High Court. According to the appellants, no one appeared on their behalf because the name of their counsel was not printed in the daily cause list. They filed a Review Petition before the High Court, but that too was dismissed by Order dated 25 July, 2000. From the Review order, it appears that it was not denied that the name of the counsel who had filed vakalatnama on behalf of the two appellants (respondents 4 & 5 before the High Court) did not appear in the daily cause list of 30 March, 2000. But the High Court declined to review or recall its order on the ground that the matter was first listed on 16 March and on that date it was directed to come up on 30 March, 2000. We think that was no reason for not recalling or reviewing the ex-parte order, as according to the appellants, the name of their counsel was not printed in the daily cause list even on 16 March, 2000, and, therefore, they had no means to know that the case was fixed for 30 March, 2000. Ordinarily, we would have remitted the matter on the ground that the Revision was heard and allowed by the High Court ex-parte. But having regard to the fact that it has now become a very old matter, we examined the High Court’s decision on merits and we are afraid we are unable to sustain it on merits either.

As noted above, the Appellate Authority had examined

the revenue records and the respective evidences produced by the two sides in great detail and had arrived at the finding that on the cut off date and for a considerable period prior to it, the two appellants were in actual cultivating possession of the disputed land. The High Court in exercise of its revisional jurisdiction brushed aside the finding of fact in a rather cavalier manner. The High Court noted the fact that in the year 1970, the names of respondent Nos. 4 and 5 (the present appellants) occurred in the Pahani but went on to observe that there was no material to show that respondent no.3 was dispossessed and the appellants were inducted to cultivate the land. The High Court said it was not known as to how their names came to be entered in the Pahani and in those circumstances, it was not possible to accept the entries found in Pahani. In our view, the High Court completely misdirected itself. The entries in the revenue records have presumptive value which could only be rebutted on the basis of some cogent evidence. Further the observation by the High Court that there was no material to show that respondent no.3 was dispossessed and the appellants were inducted to cultivate the land shows that it completely failed to appreciate the case of the appellants. The appellants did not have any independent claim over the disputed land. They claimed to be in cultivating possession of the land under respondent no. 3 who was the Archaka of the temple.

On going through the order of the Appellate Authority, we are satisfied that the High Court, exceeded its revisional jurisdiction in setting aside that order for the reasons, whatever they are, as contained in a single brief paragraph 5 of its order. We are, therefore, constrained to interfere in the matter. The order of the High Court coming under appeal is, accordingly, set aside and the order of the Land Reforms Appellate Authority is restored.

In the result, the appeals are allowed, but with no

order as to costs.

.....J
(AFTAB ALAM)

.....J
(SWATANTER KUMAR)

NEW DELHI,
MARCH 16, 2010.