

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5874 OF 2010

MAHADEVAPPA

...APPELLANT(S)

VERSUS

SADASHIVAPPA & ORS.

...RESPONDENT (S)

ORDER

1. The Appellant, who was arrayed as the Respondent No. 5 in the writ petition filed by the Respondent No. 1 before us, seeks to set aside the order passed by the learned Single Judge of the Karnataka High Court, as confirmed by the Division Bench.
2. In the year 1974, on 01.03.1974, the Karnataka Land Reforms Act, 1974 (hereinafter referred to as “the Act”) came into force. Vesting takes place by the operation of Section 44 of the Act qua the tenant and tenanted land while facilitating them to get themselves registered as occupants, on certain conditions, as mandated under Section 45 of the Act.

3. The land, which we are concerned with, vested with the Government by virtue of the provisions of the Act. The Respondent No. 1 made a request to enter his name in the revenue records, inter alia, contending that he has become the owner by virtue of a Will dated 15.12.1987 allegedly executed by his aunt, who died on 02.01.1989. The order of the Tehsildar acceding to the said request was taken up before the Assistant Commissioner, who by his order dated 05.10.1990, was pleased to set it aside along with his opinion that it is open to the Respondent No. 1 to seek a decree for declaration on the basis of the alleged Will dated 15.12.1987 from a competent civil court.
4. Proceedings were initiated by the Tehsildar by invoking Section 58 of the Act for forfeiture of the land. Upon considering the objections of the Respondent No. 1, an order was passed on 24.10.1990 forfeiting an extent of 14 acres 21 guntas of land in Survey No. 63 of Sulkod Village, Basavana Bagewadi Taluk, Bijapur District.
5. The Appellant before us is an ex-serviceman having served in the Indian Army for more than a decade. He had his leg amputated while posted in Sri Lanka as a part of the Indian Peace Keeping Force (IPKF). Under the scheme, he was granted the aforesaid land in toto on 18.01.1991 by the proceedings of the Assistant Commissioner, Bijapur. It seems to us that the Appellant has been in possession and since then cultivating the land after due improvements.

6. Respondent No. 1, on his delayed wisdom, decided to challenge the order dated 24.10.1990 passed by the Tehsildar, that too, during the pendency of the suit as indicated by the Assistant Commissioner in his order dated 05.10.1990. Accordingly, the writ petition was filed on 22.09.1997 in which the Appellant eventually got himself impleaded.
7. In the meanwhile, the Appellate Tribunal, in the appeal filed by Respondent No. 1, set aside the order dated 18.01.1991 passed by the Assistant Commissioner, wherein an extent of 14 acres 21 guntas of land was granted in favour of the Appellant, while taking note of the suit filed by Respondent No. 1 in O.S. No. 153/89 remitted the matter back to him for afresh disposal, on the premise that a lease can only be for a maximum extent of 5 acres 04 guntas only. We have been informed that the Assistant Commissioner concerned has to take a call on remand.
8. The writ petition filed by Respondent No. 1 was allowed by the learned Single Judge and the appeal filed by the Appellant was dismissed holding that the provisions of Section 58 of the Karnataka Land Reforms Act do not get attracted to a lease created prior to 01.03.1974 and Respondent No. 1 having filed the suit on the basis of the Will, is entitled to succeed, notwithstanding the delay in approaching the Court.
9. Aggrieved by the same, the Appellant is before us.

10. The learned counsel for the Appellant contended that a right having accrued leading to the possession and enjoyment, the High Court ought not to have interfered, especially when the order of the Assistant Commissioner dated 05.10.1990 has attained finality as against Respondent No. 1, who accordingly did file a suit, which is still pending disposal.
11. Per contra, the counsel for Respondent No. 1 submitted that the High Court has rightly held that the order challenged was a nullity and therefore no interference is required, especially when the appeal filed by him - Appeal No. 117/1996 was allowed by the Appellate Tribunal.
12. Learned counsel for the State submitted that the Appellant is at best entitled to a maximum of 5 acres 04 guntas only and a decision would be made in this regard.
13. Delay, laches and acquiescence are not to be applied as one of law, but as that of practice and prudence as held by this Court in *Union of India v. N. Murugesan*, (2022) 2 SCC 25. Delay of seven years on the part of Respondent No. 1 which created a third party right in favour of the Appellant is certainly a factor to reckoned with. The Appellant has got possession and is enjoying the property after making adequate improvements. The order of the Assistant Commissioner dated 05.10.1990 has become final against Respondent No.1. A mere filing of the suit for declaration based upon a Will would not create any right in his favour. Maybe, he

could have challenged the order dated 24.10.1990 passed by the Tehsildar in the pending suit along with the other reliefs sought for. Suffice it to state that until and unless Respondent No. 1 is declared as the owner on due proof of the Will, he has got no right to challenge the order dated 24.10.1990. A mere pendency of the suit for declaration seeking a relief based upon a Will, where the onus is entirely on the beneficiary of the Will to prove it in the manner known to law, would not create such a right. If the proceedings of the Tehsildar are void, then there would not have been any need for challenge. The High Court in in our considered view, did not consider the relevant materials, including the order passed in favour of the Appellant followed by his possession. We do not wish to say anything on the order passed by the Karnataka Appellate Tribunal in Appeal No. 117/1996. The said order has not been put into challenge before us and in any case, the exact entitlement of the Appellant with respect to the extent of the property is a matter to be decided by the Assistant Commissioner concerned.

14. For the aforesaid reasons, the writ petition filed by Respondent No. 1 stands dismissed by setting aside the order of the learned Single Judge, as confirmed by the Division Bench. Taking into consideration the fact that the suit filed by Respondent No. 1 is still pending disposal, despite having been filed in the year 1989, a direction is issued to the competent Court to dispose of O.S. No. 362/1987 said to have been filed before the Court of Principal Civil Judge, Bijapur, which is now transferred and renumbered as O.S. 153/1989, pending adjudication before the

Court of Munsiff, Basavana Bagewadi, within a period of 12 months from the receipt of this order and no unnecessary adjournments be given. Respondent No. 1 is given the liberty to file an appropriate application to amend the plaint and also seek impleadment of the Appellant. We also grant liberty to the Appellant to implead himself in the said suit. If the Assistant Commissioner is yet to pass the final order in pursuance of the order in Appeal No. 117/1996 passed by the Karnataka Appellate Tribunal, the same is expected to be decided after due notice to both the Appellant and Respondent No. 1, within a period of eight weeks from today.

15. Appeal is allowed in the aforesaid terms leaving the parties to bear their own costs.

.....J.
(SANJAY KISHAN KAUL)

.....J.
(M.M. SUNDRESH)

**New Delhi,
March 31, 2022**

ITEM NO.1

COURT NO.6

SECTION IV-A

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.5874/2010

MAHADEVAPPA

Appellant(s)

VERSUS

SADASHIVAPPA & ORS.

Respondent(s)

([FOR DIRECTIONS])

Date : 31-03-2022 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Appellant(s) Mrs. Vaijayanthi Girish, AOR

For Respondent(s)

Mr. H. Chandra Sekhar, AOR
Ms. Rekha Chandrasekhar, Adv.
Mr. Uday Kumar Desai, Adv.

Mr. V. N. Raghupathy, AOR

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

The civil appeal is allowed in terms of the signed order.

Pending application(s), if any, stands disposed of.

(RASHMI DHYANI)
COURT MASTER

(POONAM VAID)
COURT MASTER

(signed order is placed on the file)