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C.A.No. 3445-3446 OF 1998

ITEM No.111

Court No. 7

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 Nos. 3445-3446 of 1998

BASAMMA (DEAD) BY L.RS.

Appellant (s)

VERSUS

PATEL VEERABASAPPA (DEAD) BY L.RS. & ANR.Respondent (s)

(With office report)

Date : 10/12/2003 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr. G.V. Chandrasekhar,Adv.
Mr. P.P. Singh,Adv.

For Respondent (s)Mr. Javed M. Rao,Adv.
Mr. Mohan V. Katarki,Adv.
Mr. Ashok Kumar Sharma,Adv.

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

Mr. G.V. Chandrasekhar, learned counsel for the appellants, commenced his arguments at 3.20 p.m. and concluded at 3.55 p.m. Thereafter, Mr. Javed M. Rao, learned counsel for the respondents, commenced his arguments and was on his legs when the court rose for the day.

The matter remained part-heard.

[T.I. Rajput][Shelly Sengupta]
Court Master Court Master

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PART-HEARD

ITEM No.101

Court No. 8

SECTION IVA

DATE : 11TH DECEMBER, 2003.

CORAM AND APPEARANCE: SAME AS OF 10TH DECEMBER, 2003.

Mr. Javed M. Rao, learned counsel, resumed his arguments at 10.40 a.m. and concluded at 10.55 a.m.

The civil appeals are disposed of.

No costs.

[T.I. Rajput][Shelly Sengupta]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3445-3446 OF 1998

Basamma (Dead) by L.Rs. ...Appellant(s)

Versus

Patel Veerabasappa (Dead) by L.Rs. & Anr. ...Respondent(s)

O R D E R

The order dated 15th March, 1996 passed by the High Court is under challenge in these appeals. The facts, which are relevant and necessary for the disposal of these appeals, in short, are the following:

The appellant as well as the respondents applied for grant of occupancy rights in respect of certain lands under Section 5 of the Karnataka Village Officers Abolition Act, 1961 [for short, "the Act"]. The Tehsildar, after holding the inquiry in the light of the claims made by the parties, concluded that both the parties have equal shares in the lands attached to the village office and he re-granted the occupancy rights in favour of the parties by specifying certain lands in favour of the appellant and certain lands in favour of the respondents. The respondents herein, not being satisfied with the order passed by the Tehsildar,

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preferred an appeal before the learned Additional District Judge, which was dismissed affirming the order passed by the Tehsildar. The respondents took up the matter in revision before the High Court. The High Court, by the impugned order, found fault with the order passed by the Tehsildar holding that the Tehsildar had no jurisdiction under the provisions of the Act to effect partition in the lands over which occupancy rights were granted to both the parties. It, however, gave liberty to the appellant to work out her remedies in the civil court as regards her share in the property. Hence, this appeal.

The learned counsel for the appellant contended that the High Court did not correctly read the order of the Tehsildar; the Tehsildar did not effect partition in the lands in question but he only granted occupancy rights in favour of both the parties, having regard to the possession and enjoyment over the lands, perhaps for the sake of convenience. The learned counsel also pointed out to the definition of the "Holder of a village officer" or "Holder" contained in Section 2(g) of the Act in support of his argument that by virtue of the proviso to Section 2(g), the appellant, being a member of whole body of persons having interest in the village office and her name having been found in the relevant register, was also entitled to the grant of occupancy rights under Section 5 of the Act. He added that if the impugned order is sustained, it may amount to holding that the appellant had no right for re-grant and if she has any right, she could work out her remedies in the civil court. He drew our attention to the operative portion

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of the order passed by the Tehsildar wherein it is clearly stated that both the parties are entitled to the grant of occupancy rights, which order was also affirmed by the appellate authority.

Per contra, the learned counsel for the respondents made an attempt to say that the appellant was not at all entitled to the grant of occupancy rights; it is only the respondents who were entitled to under Section 5 of the Act. He submitted that the impugned order passed by the High Court is quite in order and it is sustainable.

It must be made clear here itself that the respondents have not challenged the impugned order.

As can be seen from the impugned order, the High Court considered the only question as to whether the properties can be partitioned by the Tehsildar at the time of re-granting. The High Court did not disturb the other findings recorded by the Tehsildar as well as by the appellate authority as to the rights of the parties. From the order of the Tehsildar, it is clear that a finding is recorded to the effect that both the parties are entitled to the grant of occupancy rights. It is true that the Tehsildar had no jurisdiction to effect partition; his jurisdiction is only to grant or not to grant occupancy rights on the basis of the claims and on being satisfied as to the requirements of law. Although the learned counsel for the appellant submitted that the Tehsildar did not effect partition but allotted different lands to both the parties when occupancy rights were claimed in respect of the lands as members of the body of the holders of village offices. We hold that the occupancy

rights shall be taken as granted in favour of both the parties and the parties have to work out their shares to which they are entitled to in civil court in accordance with law. The learned counsel, on either side, submitted that if the parties agree to take the lands as allotted to them by the Tehsildar, then there would not be any necessity to go to the civil court. It is up to the parties to do so. The High Court proceeded with the case as if no application was made by the appellant for grant of occupancy rights which is factually incorrect, as is evident from the orders of the Tehsildar as well as the appellate authority that the appellant also made the application for re-grant. The impugned order is modified to the extent indicated above. The civil appeal is, accordingly, disposed of. The interim order passed by this Court on 29th January, 1998 not to displace the appellant from the property shall continue to operate for a further period of six months and in the meanwhile the parties may work out their remedies. No costs.

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rights shall be taken as granted in favour of both the parties and the parties have to work out their shares to which they are entitled to in civil court in accordance with law. The learned counsel, on either side, submitted that if the parties agree to take the lands as allotted to them by the Tehsildar, then there would not be any necessity to go to the civil court. It is up to the parties to do so.

The High Court proceeded with the case as if no application was made by the appellant for grant of occupancy rights which is factually incorrect, as is evident from the orders of the Tehsildar as well as the appellate authority that the appellant also made the application for re-grant.

The impugned order is modified to the extent indicated above. The civil appeal is, accordingly, disposed of.

The interim order passed by this Court on 29th January, 1998 not to displace the appellant from the property shall continue to operate for a further period of six months and in the meanwhile the parties may work out their remedies.

No costs.

.....J.
[SHIVARAJ V. PATIL]

.....J.
[D.M. DHARMADHIKARI]

New Delhi,
December 11, 2003.