

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3146 OF 2017  
(ARISING OUT OF SLP(C) NO.2606 OF 2012

SMT. NARAYANI & ORS. . . . APPELLANTS

Versus

YAMUNA(D) BY LRS.& ORS. . . . RESPONDENTS

O R D E R

Leave granted.

One M.K. Battya whose legal heirs are the appellants herein, was a tenant in respect of a house situated on an area of 3 acres bearing R.S. No.27 (new No.4/19), on a monthly rent of Rs.35/-. It is an undemarcated plot. The house is constructed on the land and belongs to the respondent-landlord (since deceased) which has been found by all the courts below. The house came into possession of the appellants under a rent bond dated 3.4.1967, executed by M.K. Battya in favour of deceased respondent - Yamuna, the landlord of the suit property. The house is thus subject to the provisions of the Karnataka Rent Control Act, 1961.

However, the appellants have claimed occupancy rights in respect of the entire 3 acres of land on which the house is situated, under the provisions of

Karnataka Land Reforms Act, 1961. The proceedings for determination of their occupancy rights are still pending.

The respondent-landlord initiated eviction proceedings, initially under the provisions of the Karnataka Rent Control Act, 1961, which was continued under the provisions of Karnataka Land Reforms Act, 1961, on the ground of non-payment of rent from 1.1.1977 onwards and for sub-letting the suit premises to some other persons who are defendant nos.3 to 11. The courts below have concurrently decreed the landlord's suit for eviction on the ground of sub-letting and non-payment of the rent. Against the said decree, upheld by the High Court, the appellants have approached this Court by special leave.

The main contention of Mr. Shailesh Madiyal, learned counsel appearing for the appellants, is that the appellants cannot be evicted from 3 acres of agricultural land in respect of which they have claimed occupancy rights and the proceedings are pending since the house is situated on this 3 acres of land. The appellants cannot be evicted therefrom. Mr. Madiyal, learned counsel for the appellants, relied on section 133(1)(i) of the Karnataka Land Reforms Act, 1961, which reads as follows :

"133. Suits, proceedings, etc., involving questions required to be decided by the Tribunal. - (1) Notwithstanding anything in

any law for the time being in force.-

(i) no civil or criminal court or officer or authority shall, in any suit, case or proceedings concerning a land decide the question whether such land is or not agricultural land and whether the person claiming to be in possession is or is not a tenant of the said land from prior to 1<sup>st</sup> March, 1974."

The contention on behalf of the appellants is that the proceedings for evicting from agricultural land cannot be initiated in a civil court such as rent control court, if the proceedings involve a question which can be decided only under the Karnataka Land Reforms Act, 1961. One such question is whether such land is or is not agricultural land and whether the person claiming to be in possession is or is not a tenant of the said land.

Undoubtedly, the submission of Mr. Madiyal, learned counsel for the appellants, is correct. However, we find from the present case that the questions whether 3 acres of land is or is not agricultural land and whether the appellant/s is or is not the tenant of the land, have not fallen for consideration under the Karnataka Rent Control Act, 1961. Those questions, undoubtedly, are pending determination under the Karnataka Land Reforms Act, 1961. What is fallen for determination in these proceedings is whether the appellants are liable to be evicted from the tenancy in respect of a house as

described in the rent deed dated 3.4.1967. The description of the said house is as follows :

"House No.2/52 approved by the Alpe Panchayat Board having a middle hall, kitchen, chavadi, eastern side room, verandah with near by handloom room adjoining room with tiled roof in front of the building there are tow mango trees, two coconut trees and one nuge tree (bitter code).

The courts below have found the appellants liable to be evicted therefrom only. The civil courts which have decided the dispute about eviction of the appellants from the suit property indeed could not have decided any question about whether the entire 3 acres of land on which the appellants are claiming occupancy rights, is or is not agricultural land.

We find from the judgment of the High Court that while deciding that the appellants are liable to be evicted from their house, the High Court has observed that the appellant/s has failed to establish that it was tenancy relating to land having agrarian character. The appellants have failed to show that tenancy was for the cultivation of the land and not for user of the building. This observation of the High Court cannot be said to be related to the entire agricultural land, but must obviously be restricted to the house from which the appellants are liable to be evicted.

We make it clear that the tenancy of the entire occupancy rights claimed by the appellants in respect of 3 acres of land are pending determination and are not yet been determined and can only be determined under the Karnataka Land Reforms Act, 1961.

It is well settled, that in India, there can be dual ownership of a house and the land on which the house is constructed.

In view of the above, we see no reason to interfere with the judgment of the High Court and dispose of this appeal accordingly.

Application for impleadment is rejected.

The appellants are directed to vacate the house as described above, and hand over its peaceful possession to the respondents, within a period of three months from today.

As a sequel to the above, pending interlocutory applications, if any, stand disposed of.

.....J  
[S. A. BOBDE]

.....J  
[L. NAGESWARA RAO]

New Delhi;  
FEBRUARY 21, 2017.

ITEM NO.6

COURT NO.9

SECTION IVA

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).2606/2012

(Arising out of impugned final judgment and order dated 25/08/2010 in HRRP No.31/2009 passed by the High Court Of Karnataka At Bangalore)

SMT. NARAYANI &amp; ORS.

Petitioner(s)

VERSUS

YAMUNA(D) BY LRS.&amp; ORS.

Respondent(s)

(With office report)

Date : 21/02/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE

HON'BLE MR. JUSTICE L. NAGESWARA RAO

For Petitioner(s) Mr. Shailesh Madiyal, Adv.  
Mr. Mahesh Thakur, Adv.  
Ms. Shivani, Adv.

For Respondent(s) Mr. S. Balakrishnan, Sr. Adv.  
Mr. B.V. Niren, Adv.  
Mr. S. Gowthaman, Adv.

Mr. Sharan Thakur, Adv.  
Mr. Vijay Kumar, Adv.  
For Dr. Sushil Balwada, Adv.

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

Leave granted.

Application for impleadment is rejected.

The appeal is disposed of in terms of the signed order.

The appellants are directed to vacate the house as described above, and hand over its peaceful possession to the respondents, within a period of three months from today.

Pending interlocutory applications, if any, stand disposed of.

(Sanjay Kumar-II)  
Court Master

(Indu Pokhriyal)  
Court Master

(Signed Order is placed on the file)