

**Kallaappa and ors. Vs. Mariappa**

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**Court :** Karnataka

**Decided On :** Feb-06-1978

**Reported in :** 1978CriLJ730

**Judge :** N.R. Kudoor, J.

**Appellant :** Kallaappa and ors.

**Respondent :** Mariappa

**Judgement :**

ORDER

N.R. Kudoor, J.

1. The seven petitioners in this criminal petition were the accused in C. C. No. 312 of 1976 on the file of the Judicial Magistrate, I Class, Yelburga. They have filed this petition to quash the proceedings in the above criminal case and to discharge them.

2. The facts of the case, briefly stated, are as under:

The respondent Mariappa, a resident of Yelburga in Raichur District, has filed a private complaint against the petitioners alleging that all of them conjointly trespassed into the land bearing S. No. 433/A situate at Yelburga which was in his possession at about 11 a.m. on 11-2-1976 and forcibly cut the standing wheat crop raised by him and took it away with dishonest intention. The learned Magistrate took cognizance of the offence and issued summons to the petitioners. After the petitioners entered appearance, the respondent examined two witnesses and produced certain documents. The learned Magistrate, on assessing the material produced before him, framed a charge for an offence punishable Under Section 379 read with Section 34 of the Indian Penal Code against all the petitioners as per his order dated 26-4-1977. The petitioners have filed the present petition to quash the proceedings and to discharge them of the offence alleged.

3. Shri B. S. Raikote, learned Advocate appearing in support of the petition, contended that the petitioners have pleaded that they are the tenants in possession of S. No. 433/A of which the respondent claims to be the owner and in possession thereof. Besides, the petitioners have also filed an application before the Land Tribunal, Yelburga Under Section 48-A of the Karnataka Land Reforms Act, 1961 (shortly called the 'Act') for registration of occupancy right in respect of the said survey number in their names. Therefore, he has contended that the learned Magistrate should not have framed charge against the petitioners and proceeded with the case as he had no jurisdiction to entertain the proceedings in the face of the plea

raised by the petitioners. He submitted that the only course left to the Magistrate in such a situation was to discharge the petitioners directing the parties to seek their redress before the Land Tribunal. The argument of Sri Raikote has two phases. The first phase of his argument is that since the petitioners have contended that they have been in possession of S. No. 433/A as tenants, the Magistrate should have stayed the criminal proceedings and refer the question of tenancy to the land tribunal for its decision and report as required Under Section 133 of the Act. To better appreciate this argument, it, will be useful to refer to Section 133 of the Act, It reads thus :

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 is 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 1st March 1974;

(ii) such Court or Officer or Authority shall stay such suit or proceedings in so far as such question is concerned and refer the same to the Tribunal for decision;

(iii) all interim orders issued or made by such Court, Officer or Authority, whether in the nature of temporary injunction or appointment of a receiver or otherwise, concerning the land shall stand dissolved or vacated, as the case may be;

(iv) the Tribunal shall decide the question referred to it under clause (1) and communicate its decision to such court, officer or authority. The decision of the Tribunal shall be final.

(2) Nothing in Sub-section (1) shall preclude the Civil or Criminal Court or the officer or authority from proceeding with the suit, case or proceedings, in respect of any matter other than that referred to in that Sub-section.

4. It is provided Under Section 133 (1) (i) of the Act that no civil or criminal court or officer or authority shall decide the question in any suit, case or proceedings concerning a land whether such land is or it not agricultural land and whether the person claiming to be in possession in or is not a tenant of the said land from prior to 1st March 1974. Clause (ii) of Sub-section (1) provides for staying of such suit or proceedings in 90 far as such question as referred to in clause (i) of Sub-section (1) is concerned and referring the same to the tribunal for decision. Clause (iv) of Sub-section (1) provides that the tribunal shall decide the question referred to it under clause (i) and communicate its decision to such court, officer or authority, and the decision of the tribunal shall be final. Sub-section (2) of Section 133 of the Act provides that nothing in Sub-section (1) shall preclude the civil or criminal court or the officer or authority from proceeding with the suit, case or proceedings in respect of any matter other than that referred to in Sub-section (1) of Section 133 of the Act, A careful reading of the provisions of Section 133 of the Act would make it abundantly clear that in any suit, case or proceedings concerning a land, the question whether such a 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 from prior to 1st March 1974, is involved for a decision, then only such question should be referred to the decision of

the land tribunal by staying the suit, case or proceedings. That being the position of law Under Section 133 of the Act, the next question that would arise for consideration in this case would be whether the petitioners are the tenants in possession of S. No. 433/A from prior to 1st March 1974 is a question to be decided in the criminal case before the Magistrate.

5. The complaint filed by the respondent against the petitioner is based on the averments that the respondent was the owner in possession of the land bearing S. No. 433/A and three other lands. He was illegally dispossessed of those lands by petitioner-1, petitioner-2, husband of petitioner-3 and one Ramappa Harijan. Therefore, the respondent filed a suit O. S. No. 460/1 of 1963 in the Court of the Munsiff at Yelburga for possession. The suit was decreed. The defendants in the said suit took up the matter in appeal in R. A. No. 81/1 of 1966 to the court of the Civil Judge, Raichur. The appeal was dismissed. They made one more unsuccessful attempt in the High Court in R. S. A. No. 961 of 1971 which was also dismissed on 19-4-1975 (Kant). Thereafter, the respondent took possession of all the lands including S. No. 433/A in Execution Case No. 1 of 1976 on 6-1-1976 with standing crops. According to the respondent, since that date, he has been in possession of S. No. 433/A. When the matter stood at that stage, all the petitioners herein trespassed into the land bearing S, No. 433/A at about 11 a.m. on 11-2-1976 and forcibly cut and removed the standing wheat crop. On the basis of these allegations, he filed the complaint against the petitioners. He has examined two witnesses and produced the relevant records pertaining to the civil litigation referred to above. The petitioners have not disputed the civil litigation and the result thereof in respect of S. No. 433/A.

6. It is clear from the allegations made in the complaint and the evidence produced in the case that the case of the respondent is that on the date of the commission of the offence viz., on 11-2-1976, he was in possession of S. No. 433/A with standing wheat crop thereon and the petitioners have entered the land unlawfully without his consent and forcibly cut and removed the wheat crop with dishonest intention. Therefore, the only question that arises for decision in the criminal case would be whether the respondent was in possession of S. No. 433/A with the standing crop on 11-2-1976 and whether the petitioners forcibly entered the land and cut and removed the crop without the consent of the respondent with dishonest intention. In the circumstances of the case, whether the petitioners are tenants in possession of the land from prior to 1st March 1974 is not a relevant question that would arise for decision in the case merely because the petitioners have taken up the plea that they are the tenants in possession of the land. The prosecution case would stand or fall on the proof or otherwise of the respondent being in possession of the land in question with standing crop thereon on the date of the offence viz., 11-2-1976. That being the question involved for decision in the criminal case, the question whether the petitioners are tenants to possession of the land from prior to 1st March 1974 does not arise for decision as required under clause (i) of Sub-section (1) of Section 133 of the Act. It is clearly provided under Sub-section (2) of Section 133 of the Act that nothing contained in Sub-section (1) shall preclude a criminal court from proceeding with the case in respect of any matter other than that referred to in Sub-section (1). It seems to me that on the facts of the case, no decision is required in respect of any matter referred to in clause (i) of Sub-section (1) of Section 133 of the Act for deciding the question whether the petitioners have committed an offence punishable Under Section 379 read with Section 34 of the Indian Penal Code.

7. Shri Raikote, in support of his submission placed reliance on a decision of this

Court in *Mudakappa Veerupaxappa Kori v. Channabasappa Rudrappa Kori* (1977) 2 Kant LJ 104. The facts of that case were that Mudakappa Veerupaxappa Kori filed a complaint to the police alleging that the five-named accused entered upon his land, which was in his exclusive possession as a tenant having acquired the right and title from his father, committed criminal trespass and theft of the crops raised by him. The five accused who were no other than the collaterals of the complainant claimed that they were the joint tenants inasmuch as their father was joint in status with the father of the complainant. The police investigated the case and filed a charge-sheet against the accused Under Sections 447 and 379 I.P.C. The consistent defence of the accused was that they were joint tenants and as such they could not be said to have committed the offence of trespass and theft of crops which very much belonged to them also. The Magistrate, on consideration of the evidence, held in favour of the accused that they were the joint tenants with the complainant and acquitted all of them. The complainant filed a criminal revision petition before this Court against the order of acquittal. It was contended before this Court that the order of acquittal cannot be sustained in view of the provisions of Section 133 of the Act as it is laid down therein that no criminal court could decide the question whether the person claiming to be in possession of agricultural land is or is not a tenant. Accepting the contention, D. B. Lai, J., observed thus :

In the instant case obviously the tenancy was claimed from a date prior to 1st March 1974. Therefore, the question regarding tenancy was directly covered under Sub-section (1) (i) of Section 133 and under Sub-section (1) (h) the Court had to stay the proceeding and refer the dispute regarding tenancy to the Tribunal for its decision. It is only after the question referred to is decided by the Tribunal that the proceeding could commence before the Criminal Court. It is especially so because in the present dispute, the main question was relating to criminal trespass and theft. If the accused were joint tenants, perhaps it could not be stated that they committed the offence of criminal trespass or even of theft. Being joint tenants, they had every right to go over their land and also to grow crops. Therefore, the question of tenancy was of prime importance. The two offences imputed against the accused could either be proved or disproved upon decision of such a question of tenancy. In view of Section 133, the question of tenancy could only be decided by the Land Tribunal and not by any other Court. Therefore there was decidedly a manifest illegality in the order of the learned Magistrate and the said order will have to be set aside.

8. The facts of the above case are quite different from the facts of the instant case. In that case, the complainant claimed to be in possession of the land in question as the exclusive tenant having acquired the right and title from his father whereas the accused claimed joint tenancy in respect of the same land along with the complainant on the ground that their father was joint in status with the father of the complainant under whom the complainant claimed his right and title. The trial Magistrate while deciding the question whether the accused had committed criminal trespass and theft of the crops, recorded a finding on the question of tenancy that the accused were the joint tenants with the complainant and acquitted them. On the facts of that case, this Court found that the tenancy was claimed from a date prior to 1st March 1974 and therefore, the question regarding tenancy was directly covered under Sub-section (1) (i) of Section 133 of the Act and under Sub-section (1) (ii), the court had to stay the proceedings and refer the dispute regarding tenancy to the tribunal for its decision as the question of tenancy had a direct bearing in deciding the issue whether the accused had committed the offence of criminal trespass and theft of crops. In the case on hand, on facts, I have reached the conclusion that the question of tenancy has no

bearing in deciding the issue whether the accused have committed the theft of the crop standing on the land S. No. 433/A which the complainant claims to be in his exclusive possession as owner thereof. In that view of the matter, I am inclined to hold that the decision in Mudakappa Veerupaxappa Kori's case (1977) 2 Kant LJ., 104 would not help the petitioners in this case.

9. The second leg of the contention of Shri B. S. Raikote is that the application filed by the petitioners Under Section 48-A of the Act for registering their names as occupants in respect of S. No. 433/A is pending before the Land Tribunal at Yelburga and as such the criminal proceedings against the petitioners for the commission of the theft of the crops from the very same land is barred Under Section 133 of the Act.

10. A similar contention was advanced before this Court in Lakshmiah v. State (1977) 2 Kant LJ 94 : 1977 Cri LJ NOC 275 that a proceeding before the land tribunal would operate as a bar Under Section 133 of the Act and therefore, the criminal court has no jurisdiction to entertain the complaint Under Section 145 of the Code of Criminal Procedure, 1973 (shortly called the 'Code') or to initiate any proceedings in regard thereto. Repelling that contention, this Court held that whatever the land tribunal is called upon to decide Under Section 133 (1) (i) of the Act pertaining to the tenancy, which is obviously the title of one person claiming right of tenancy is not the subject-matter of proceedings before the Magistrate Under Section 145 of the Code. In a proceeding Under Section 145 of the Code, the date of 1st March 1974 has absolutely no significance and further, the criminal court in such a proceeding is called upon to decide whether the person claiming possession was in fact in possession on a particular date and as such he can seek protection of the executive Magistrate to retain that possession until he is dispossessed after a decision upon title by a competent court is taken against him. In the case on hand, as pointed out earlier, whether the petitioners are the tenants of the land in question from prior to 1st March 1974 is not a question to be considered for rendering a decision whether the petitioners have committed the offence punishable Under Section 379 read with Section 34 of the Indian Penal Code. That being so, the proceedings before the Land Tribunal at Yelburga will not be a bar to proceed against the petitioners in the criminal court. Therefore, the second leg of the contention of Sri Raikote also must fail.

11. The next contention urged in support of the petition is that the trial Magistrate has not considered the material produced in the case before framing the charge. I have perused the impugned order and also the material produced in the case. From the impugned order, it is difficult to accept the contention urged on behalf of the petitioners that the trial Magistrate has not considered the material produced before him before framing the charge. Besides, it cannot be said that the Magistrate has committed any illegality or irregularity in framing the charge against the petitioners on the basis of the material produced by the respondent-complainant. Therefore, I see no force in this submission also,

12. The last contention urged on behalf of the petitioners is that the dispute in question is essentially of a civil nature and as such the petitioners should have been discharged. I find it difficult to accept this submission also in view of the material produced in the case, both oral and documentary,

13. For the reasons aforesaid, I see no merit in this petition. Accordingly, the petition is dismissed.

