(1985) 08 KAR CK 0015

In the Karnataka High Court

Case No : C.R.P. No. 3155 of 1985

Babi D''Souza APPELLANT

Vs

Syndicate Bank RESPONDENT

Date of Decision : 30-08-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 44, 48 A, 61, 61 (2)

Citation : (1986) ILR (Kar) 900

Hon'ble Judges : Kulkarni, J

Bench : Single Bench

Advocate : P. Ramachandra Rao, for the Appellant; K.R. Prabhu, for the Respondent

Judgement

Kulkarni, J.—This is a second Judgment - Debtors''s revision against the order dated 15-7-1983 passed by the Civil Judge, Udupi, in execution case No. 45/83 over-ruling the objections of the second J. Dr.

2. The Decree-Holder sued out the execution to recover the money from J. Dr. 2-revision petitioner, by attachment and sale of the occupancy rights conferred on the second J. Dr. by the Land Tribunal.

3. J. Dr-2 resisted the petition contending that the occupancy rights conferred on him cannot be sold at all as per Section 61 of the Land Reforms Act. The Trial Court over-ruled the objections of J Dr. 2-revision petitioner. Hence, the revision.

4. It is undisputed that the occupancy rights have been conferred on J Dr-2 in respect of Sy. No. 76/8 and 76/16. Section 61 of the Karnataka Land Reforms Act reads :

"61. Restriction on transfer of land of which tenant has become occupant :- (1) Notwithstanding anything contained in any law, no land of which the occupancy has been granted to any person under this Chapter shall, within Fifteen years from the date the certificate u/s 55 is issued be transferred by sale, gift, exchange, mortgage, lease or assignment ; but the land may by partitioned among members of the holder''s joint family subject to condition that no fragment shall be created by any such partition ;

(2) Notwithstanding anything contained in Sub-section(1), it shall be lawful for the occupant registered as such or his successor in title to take a loan and mortgage or create a charge on his interest in the land in favour of the State Government, a financial institution, a co-operative land development bank, a co-operative society or a Company as defined in Section 3 of the Companies Act, 1956 in which not less than fifty one per cent of the paid up share capital is held by the State Government or a Corporation owned or controlled by the Central Government or the State Government or both for development of land or improvement of agricultural practices ; and without prejudice to any other remedy provided by any law, in the event of his making default in payment of such loan in accordance with the terms and conditions on which such loan was granted) it shall be lawful to cause his interest in the land to be attached and sold and the proceeds to be utilised in the payment of such loan.

(3) Any transfer or partition of land in contravention of Sub-section (1) shall be invalid, and such land shall vest in the State Government free from all encumbrances and shall be disposed in accordance with the Rules relating to grant of Government lands."

What Section 61 prohibits is voluntary transfer by a person on whom occupancy rights have been conferred. Learned Counsel Ramachandra Rao submitted that Section 61(1) does not lay down that ''no person shall sell.'' According to him, Section 61(1) prescribes an absolute restraint on the alienations referred to in Section 61(1). Section 61(2) clearly lays down that the person in whose favour occupancy rights have been granted, can take loan on mortgage of such property and can create a charge on such interest of his, in order to secure the loans from the said financial, institutions and that too only for the development or improvement of the lands. Thus Section 61(2) clearly says that the person on whom the occupancy rights have been granted, has got an interest in the lands. Section 61(3) makes it clear that any transfer or partition of land in contravention of Sub-section (1) shall be invalid. Therefore, on a perusal of Section 61(1) (2) and (3) it becomes crystal clear that a person on whom the occupancy rights were conferred, has got an interest in the land. Section 61(1) does not prohibit sale by an order of the Court in execution proceedings. In order to make matters clear, I would refer to Section 34 of Land Reforms Act. It reads :

"(1) Save as expressly provided in this Act or in the Mysore Co-operative Societies Act, 1959, no interest of a tenant in any land held by him as a tenant shall be liable to be attached, seized or sold in execution of a decree or order of a Civil Court."

Section 34. imposes a prohibition on the Court sale if the land is held by the tenant. If the legislature intended that the interest of the person on whom occupancy rights are conferred, is not to be sold in the execution of the decree, a similar provision would have been made in Section 61. The absence of any such provision makes it clear that the interest of a person on whom occupancy rights have been conferred, could be attached and sold in execution of the decree. Therefore, the argument of Sri Ramachandra Rao fails.

5. similar question arose in CRP 447/82, Anwarsaheb v. Murigeppa -- DD 1-7-1983 The said CRP was dismissed at the stage of the admission itself. But, however, this Court has written an order which clearly supports the view that I have taken in the matter.

6. Section 44(2)(d) of the Karnataka Land Reforms Act, reads as :--

"No such lands shall be liable to attachment in execution of any decree or other process of any Court and any attachment existing on the date of vesting and any order for attachment passed before such date in respect of such lands shall cease to be in force."

Once a tenanted land becomes vested in the State Government u/s 44 of the Karnataka Land Reforms Act, it vests in the State Government free from all encumbrances. By virtue of vesting itself, the original owner of the land would have lost all his right, title and interest and on account of vesting, the right, title and interest would have become vested in the State Government. Therefore no such land which has become vested in the State Government u/s 44, shall be liable to attachment in execution of any decree. This bar operates so long as the land remains vested in the State Government. Once the occupancy rights are conferred on the tenant as a result of an enquiry u/s 48A of the Karnataka Land Reforms Act and once a certificate u/s 55 is issued, the land ceases to be vested in the State Government and the tenant becomes the full owner thereof. Once the occupancy rights have been conferred on the tenant, the occupancy rights so conferred would amount to an interest in the property. That becomes clear from a reading of Section 61(2) of the Karnataka Land Reforms Act. Section 61(2) authorises such a person on whom occupancy rights have been conferred, to raise a loan from the financial institutions mentioned in it for the development of the land. It further provides that if he does not pay back the money it shall be lawful to cause his interest in the land to be attached and sold and the proceeds could be utilised for the satisfaction of such loan. Thus, a reading of Section 61(2) of the Karnataka Land Reforms Act shows that the occupancy rights amount to an interest in the land held by the person on whom the occupancy rights have been conferred. Otherwise the question of attachment and sale of such an interest as contemplated by Section 61(2), does. not arise at all, Therefore, in my opinion, the occupancy rights conferred on a person after an enquiry conducted u/s 48A, would amount to an interest held by such a person in the land. There is nothing either in Section 61 or any other provision of the Karnataka Land Reforms Act prohibiting the Civil Court from attaching and selling of such an interest in the execution of a decree.

7. Section 80 of the Karnataka Land Reforms Act reads as : --

"80. Transfers to non-agriculturists barred :--

(1) (a) No sale (including sales in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue) gift or exchange or lease of any land or interest therein, or

(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee, shall be valid in favour of a person --

(i) who is not an agriculturist or ;

(ii) who being an agriculturist holds as owner or tenant or partly as owner and partly as tenant land which exceeds limits specified in Section 63 or 64 ; or

(iii) Who is disentitled u/s 79A or Section 79B to acquire or hold any land

Provided that the Assistant Commissioner having jurisdiction over the area or any officer not below the rank of an Assistant Commissioner authorised by the State Government in this behalf in respect of any area may grant permission for such sale, gift or exchange, to enable a person other than a person disentitled to acquire or hold land u/s 79-A or Section 79-B who bona fide intend taking up agriculture to acquire land on such conditions as may be prescribed in addition to the following conditions, namely :--

(i) that the transferee takes up agriculture within one year from the date of acquisition of land, and

(ii) that if the transferee gives up agriculture within five years, the land shall vest in the State Government, subject to payment to him of an amount equal to eight times the net annual income of the land or where the land has been purchased, the price paid for the land, if such price is less than eight times the net annual income of the land.

(2) Nothing in Sub-section (1) shall apply to lands granted u/s 77."

Thus Section 80 only prohibits a Court sale in favour of a person who is not an agriculturist or who is covered by Section 80(1)(b)(ii)(iii). Prohibition of an alienation in favour of a person who is not an agriculturist, does not amount to a total restraint on the sale in the execution of a decree. In view of Section 80, it appears that the Court while conducting the sale in execution of the decree, will have to find out as to whether the bidder is an agriculturist within the meaning of Karnataka Land Reforms Act. Therefore Section 80, in my opinion, does not prevent a Court sale in execution of the decrees.

8. If the Legislature intended that the occupancy rights conferred on a person after an enquiry held u/s 48A of the Karnataka Land Reforms Act should not be attached or sold in execution of a decree, the Legislature would have created such a restraint on Court sales by incorporating the provisions similar to Sections 34 and 44(2)(d) of the Karnataka Land Reforms Act. When the Legislature has

not created a bar on attachment and sale of the occupancy rights conferred on a person, the jurisdiction of the Civil Court in attaching and selling of the occupancy rights conferred on a person, cannot be said to have been taken away.

9. The Learned Counsel Sri Ramachandra Rao submitted that there is a farm house in these lands which form a compact area and that the farm house cannot be sold as per Section 60(1)(c) of C.P.C. Section 60(1)(c) C.P.C. says that a farm house belonging to an agriculturist should not be sold. But, in the affidavit filed in this Court, the revision petitioner-judgment debtor-2 himself has given his occupation as driver and agriculturist. The word ''agriculturist'' means a person who earns his livelihood mainly by doing agriculture. If the income from agriculture is not alone the source of maintenance and if he has got some other source of income, then he cannot be considered to be an agriculturist within the meaning of Section 60(1)(c) C.P.C. Further, no such case has been made out by him in his objection also. Therefore, this objection put forth for the first time is rejected.

10. In the result, there is no merit in the revision and it is dismissed.

