

(1972) 06 KAR CK 0019
In the Karnataka High Court
Case No : Ex. Second Appeal No. 57 of 1968

Bhawani Shankar Waman Saunshi and Others	APPELLANT
Vs	
Giridhar Ranganath Kulkarni and Others	RESPONDENT

Date of Decision : 27-06-1972

Acts Referred:

Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950 — Section 4, 4 (1), 4 (2)
Karnataka Land Revenue Act, 1964 — Section 100

Citation : AIR 1972 Kar 348

Hon'ble Judges : V.S. Malimath, J

Bench : Single Bench

Advocate : B.V. Deshpande, for the Appellant;

Final Decision : Allowed

Judgement

V.S. Malimath, J.—This appeal is by the decree-holders against the decree passed by the Civil Judge at Hubli in Civil Appeal No. 101 of 1965 reversing the decree passed by the Munsiff at Hubli in L. D. No. 224 of 1962. The appellants obtained a money decree against the father of the respondents for a sum of Rs. 9,317/- from the Court of the Munsiff at Dharwar.. The decree-holders prayed for transfer of the decree to the. Court of the. Munsiff, Hubli for purposes of execution. At the instance of the decree-holders, the properties bearing C. T. S. Nos. 1492/A. 1492/B and 1492/C were attached. When the decree-holders sought to bring those properties to sale, the respondents objected to the same on the ground that the properties cannot be sold in view of the bar contained in Section 4 (2) of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950. That objection of the respondents was ruled out by the executing Court by its order dated the 17th of April. 1965. That decision was challenged by the judgment-debtors in Civil Appeal No. 101 of 1965 in the Court of the Civil Judge at Hubli. During the pendency of the appeal, the decree-holders made an application I. A. No. IV and sought permission of the Court to seek the permission of the Deputy Commissioner for and on behalf of the Court for the sale of the aforesaid three

properties in execution of the decree obtained by them. That application was rejected and the decree passed by the executing Court was set aside. It was held by the learned Civil Judge that the attachment of the properties in question is invalid. Hence this execution second appeal by the decree-holders.

2. It appears to me that the view taken by the Court below that the attachment of three properties in question is invalid, is not in accordance with law. It is no doubt true that the properties in question constituted "Watan" under the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950. It is also not disputed that u/s 4 of the said Act these three properties were re-granted to the judgment-debtors. It is also not possible to dispute that when the properties are so re-granted u/s 4, the provisions of Sub-section (2) of Section 4 of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950 are attracted. Section 100 of the Mysore Land Revenue Act, 1964, which is similar to Section 70 of the Bombay Land Revenue Code, has a bearing on this question and reads as follows:---

"In any case, where an occupancy is not transferable without the previous sanction of the prescribed authority and such sanction has not been granted to a transfer which has been made or ordered by a Civil Court or on which the Court's decree or order is founded--

(a) such occupancy shall not be liable to the process of any Court and such transfer shall be null and void; and

(b) the Court, on receipt of a certificate under the hand and seal of the Deputy Commissioner, to the effect that any such occupancy is not transferable without the previous sanction of the prescribed authority and that such sanction has not been granted, shall remove the attachment or other process placed on or set aside any sale of or affecting such occupancy".

3. It is clear from Clause (b) of Section 100 that the Court is required to raise the attachment or other process placed on or set aside any sale of the property which cannot be transferred without the previous sanction of the Deputy Commissioner. Only when the Court receives a certificate under the hand and seal of the Deputy Commissioner to the effect that such occupancy is not transferable without the previous sanction of the prescribed authority and that such sanction has not been granted. Section 4 (2) of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950 does not contain an absolute bar against transfer of property which has been granted under Sub-section (1) of Section 4. It is, therefore, not possible to take the view that the property regranted under subsection (1) of Section 4 is not transferable at all. All that can be said is that the transfer is permissible if the prescribed conditions specified in Section 4 are satisfied. Those conditions are that prior permission of the prescribed authority should be taken for transfer and the necessary amount ordered should be paid. The combined effect of Section 4 (2) of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950 and Section 100 of the Mysore Land Revenue Act.

1964 is that the court is not precluded from attaching the property re-granted u/s 4 (1) unless and until the certificate contemplated under Clause (b) of Section 100 is received by the Civil Court. It is not the case of the judgment-debtors that any such certificate was issued by the Deputy Commissioner much less that any such certificate was produced before the executing Court. It is therefore, an error to hold that the attachment of the properties in question in the present case is invalid merely on the ground that the properties attached are those which have been regranted u/s 4 (1) of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950.

4. The court below was also wrong in rejecting the application filed by the decree-holders seeking permission of the court to make an application for the permission of the Deputy Commissioner for transfer of the properties in question as required by Section 4 (2) of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950. Section 4 does not say that it is only the grantee of the properties that alone is competent to secure a permission of the Collector for transfer of the properties regranted u/s 4 of the same act. As held by the High Court of Bombay in *Tukaram Zipru Wani Vs. Baban Dhondu Deshmukh*, a decree-holder during execution proceedings can, however, on behalf of the Court obtain sanction for sale of the land from the Collector (now Deputy Commissioner) u/s 4 (2) of the Act. The Court below was therefore in error in rejecting I. A. No. IV filed by the decree-holders.

5. For the reasons stated above, I set aside the order passed by the Civil Judge as well as the decree passed by the executing court on the 17th of April, 1965. I allow the application I. A. No. IV filed by the decree-holders and grant them permission to make an application to the Deputy Commissioner for sale of the property in question u/s 4 (2) of the Act. The appellants are given two months' time from today to make the application. The executing Court shall proceed to dispose of the matter on merits after the decree-holders produce the orders on the application which they are directed to file u/s 4 (2) of the Act. No costs.

6. Let this order as well as the records be dispatched to the executing Court within a week from today.